

# Establishing and Evaluating a Workplace Mediation Pilot Project: An Ohio Case Study

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## I. INTRODUCTION

Disputes arising in the context of employment relationships have the potential to be among the most disruptive of disputes, both because of the amount of time that people who work together must interact with each other and because the nature of the working relationship between coworkers or between supervisors and subordinates has a profound effect on the ability of those individuals to accomplish necessary tasks.<sup>1</sup> For many of the same reasons, traditional methods of dispute resolution—by way of administrative

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<sup>1</sup> See Thomas J. Bergmann & Roger J. Volkema, *Understanding and Managing Interpersonal Conflict at Work: Its Issues, Interactive Processes, and Consequences*, in *MANAGING CONFLICT: AN INTERDISCIPLINARY APPROACH* 7, 7 (M. Afzalur Rahim ed., 1989) ("Conflict that is not identified, understood and managed effectively can lead to inefficient use of organizational resources, stress on the conflicting parties, and misdirection of the energies of those affected by the conflict situation."); *id.* at 15–18 (discussing consequences of conflict in supervisor-subordinate and coworker relationships); see also Allen C. Amason & David M. Schweiger, *The Effects of Conflict on Strategic Decision Making Effectiveness and Organizational Performance*, in *USING CONFLICT IN ORGANIZATIONS* 101, 101 (Carsten De Dreu & Evert Van de Vliert eds., 1997).

Conflict can disrupt the exchange of information among the team of decision makers, reducing decision quality. Conflict can undermine the commitment that is needed to get the decision properly implemented. Finally, conflict can reduce satisfaction and affective acceptance among the team members, threatening cohesion and the prospects for future decisions.

*Id.* This is not to say that workplace disputes have only a negative effect on workplaces and the persons that populate them; there can also be positive aspects of at least some types of workplace disputes. See *id.* at 104.

or judicial resolutions of disputes—are not particularly effective for addressing or resolving employment disputes, particularly those arising from an on-going relationship.<sup>2</sup> Adjudicatory methods of dispute resolution focus on the positions of each party to the dispute, encouraging parties to stake out their positions and seek to prove the merits of those positions.<sup>3</sup> In contrast, at least some methods of alternative dispute resolution attempt to focus more on the interests of the parties, attempting to capitalize on the common interests of parties in seeking a resolution to disputes.<sup>4</sup>

Additionally, administrative and judicial methods of dispute resolution have been perceived as increasingly costly in terms of both time and money, causing employers to look for alternative, and less costly, methods of resolving disputes. Although a primary reason given for the move toward other dispute resolution techniques is the belief that these methods are less expensive than litigated cases in the judicial or administrative system, there remain substantial questions about whether use of alternative methods of dispute resolution actually results in lower costs.<sup>5</sup>

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<sup>2</sup> See JOSEPH B. STULBERG, *TAKING CHARGE/MANAGING CONFLICT* 17–20 (1987) (recognizing that employees generally do not litigate or take other official action with respect to disputes arising out of existing employment relationships, but rather are likely to choose methods of dispute resolution that “rank[] high on the criterion of not irreparably damaging the continuing working relationship of the disputants”).

For example, in a pilot mediation project conducted by the Equal Employment Opportunity Commission (EEOC) in 1992 to 1994, 79% of the cases entering the pilot project, either for assignment to mediation or to regular EEOC processing as part of the control group, were discharge cases; the other 21% of the cases dealt with discipline and terms and conditions of employment. See CRAIG A. MCEWEN, *AN EVALUATION OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION’S PILOT MEDIATION PROGRAM* 21 (1994).

<sup>3</sup> One commentator indicates that the posture of parties in traditional litigation is “to stay as far apart as possible, send in their lawyers, keep everything as close as possible to the vest, share no information, and wait five years for a determination of liability while their lives turn into shambles around them.” John Sands, *Alternative to What?: Primary Conflict Management—The New Face of Alternative Dispute Resolution*, 10 ST. JOHN’S J. LEGAL COMMENT. 603, 609 (1995).

<sup>4</sup> See NANCY H. ROGERS & CRAIG A. MCEWEN, *MEDIATION: LAW, POLICY & PRACTICE* § 3:02 (2d ed. 1994) (describing mediation as a process by which mediators attempt to assist parties in moving from their conflicting positions to consider alternatives for settlement, with a focus on the “perceptions, concerns, and interests” of parties); STULBERG, *supra* note 2, at 1 (describing mediation as a process by which mediators “forg[e] a common ground among disputants” and “force persons to clarify interests and transform rhetoric into proposals”).

<sup>5</sup> See ROGERS & MCEWEN, *supra* note 4, § 2:05 (noting that expansion of use of dispute resolution has been prompted in part by concerns about time and cost considerations of the public justice system); see also U.S. GEN. ACCOUNTING OFFICE, *ALTERNATIVE*

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Employers and employees have turned to alternative methods of resolving employment disputes in increasing numbers.<sup>6</sup> The use of arbitration, long common in the unionized context,<sup>7</sup> has spread into the nonunionized context and has become the dispute resolution method of choice for many private sector employers.<sup>8</sup> And, with increasing frequency, employers, particularly public sector employers, are being encouraged to utilize mediation in connection with attempting to resolve workplace disputes.<sup>9</sup>

One such effort to encourage the use of mediation to resolve workplace disputes has been undertaken by the Ohio Commission on Dispute Resolution and Conflict Management (Commission). Through its Workplace Mediation Pilot Project, the Commission has sought to introduce state employees and state agencies to the use of mediation. This Article describes the genesis and purpose of the Workplace Mediation Pilot Project and an evaluation of the early stages of that project undertaken by the Author. The Author recognizes that the evaluation produced a small number of total responses and that the surveys measured the perceptions of respondents. However, the Author believes that the results of that evaluation provide useful information for agencies and other entities who desire to develop mediation programs for their workplaces.

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DISPUTE RESOLUTION: EMPLOYERS' EXPERIENCES WITH ADR IN THE WORKPLACE 2-4 (1997) (noting that although comprehensive data is not available on whether use of alternative methods of dispute resolution saved organizations time and money, organizations using such processes generally believed that those savings were occurring).

<sup>6</sup> A report by the General Accounting Office (GAO) indicates that use of alternative methods of dispute resolution for discrimination complaints by federal agencies increased from 31% in 1994 to 49% in 1996. Although it did not have specific figures for use of alternative dispute resolution by private firms, it indicated that discussions with experts suggested an increase in the use of alternative dispute resolution by private sector employers over the same period. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 5, at 14.

<sup>7</sup> See Sarah Rudolph Cole, *A Funny Thing Happened on the Way to the (Alternative) Forum: Reexamining Alexander v. Gardner-Denver in the Wake of Gilmer v. Interstate/Johnson Lane Corp.*, 1997 BYU L. REV. 591, 593 (discussing the development of arbitration in the unionized setting).

<sup>8</sup> See *id.* at 591-593. In the General Accounting Office study of use of alternative dispute resolution in employment disputes, the agency reported that arbitration was more commonly used by private sector employers than public sector employers outside of the collective bargaining context; non-collective-bargained-for arbitration was used by all five of the private sector employers studied by the GAO in its report. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 5, at 18.

<sup>9</sup> See NANCY H. ROGERS & CRAIG A. MCEWEN, *MEDIATION: LAW, POLICY & PRACTICE* § 12:08 (1994 & Supp. 1997) (discussing increased use of mediation of employment cases in the private and public sectors).

## II. THE COMMISSION'S WORKPLACE MEDIATION PILOT PROJECT

The Ohio Commission on Dispute Resolution and Conflict Management's Workplace Mediation Pilot Project was developed in response to a proposal by a state agency, the Ohio Department of Commerce, to create a program to experiment with the use of mediation to resolve intra-agency disputes. The Department of Commerce proposed that a number of its employees be trained to provide mediation services to other agencies for use in resolving those other agencies' personnel and other workplace disputes; in turn, those other agencies would offer the services of a number of their employees for training and mediation services to resolve workplace disputes within the Department of Commerce.<sup>10</sup>

The Workplace Mediation Pilot Project, as adopted in February 1997, focused on three Ohio state agencies, the Department of Commerce, the Department of Human Services, and the Environmental Protection Agency, each of which contributed employees to serve as mediators to form a shared neutrals pool, in order to mediate disputes arising out of those three agencies and to provide neutrals for other agencies in need of mediation services. Under the pilot project, members of the shared neutrals pool would not act as neutrals in cases involving their own agency.

Mediators from each of the state agencies participating in the pilot project were provided mediation training by the Center for Dispute Resolution at Capital University Law School in January 1997. A total of nineteen mediators were initially trained in the State of Ohio Interagency Shared Neutrals Mediation Training sessions. Five of those mediators were employees of the Department of Commerce, four of those mediators were employees of the Department of Human Services, and six of those mediators were employees of the Environmental Protection Agency. In addition, there were four employees from other agencies trained at that time, including two employees of the Department of Administrative Services, one employee of the Department of Natural Resources, and one employee of the State Library of Ohio.<sup>11</sup> Three other individuals also served as mediators under the pilot

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<sup>10</sup> See Confidential Proposal for a Dispute Resolution Program for the Ohio Department of Commerce (undated) (on file with author).

<sup>11</sup> See List of Trained Mediators (undated) (on file with author). Among those trained as mediators were the original agency coordinators of the three agencies involved in the pilot project, as well as two persons who later assumed the position of agency coordinator for their agency. Accordingly, each of the former or current agency coordinators were trained as mediators in the initial Ohio Interagency Shared Neutrals Mediation Training program in January 1997.

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project. One of those additional mediators was an employee of the Commission, who had received mediation training at The Ohio State University College of Law. The second was an employee of the Ohio Supreme Court, who had previously received mediation training. The third had not received formal mediation training at the time of the mediation session in which he participated.<sup>12</sup>

Each of the three agencies involved in the pilot project identified an individual to act as an agency coordinator for the pilot project. That individual was responsible for coordinating requests for mediation services, as well as for promoting the pilot project within the agency. Materials were prepared by at least some of the agencies involved in the pilot project and were distributed to agency employees to inform them of the availability of mediation services and of the shared neutrals pool. Those materials explained the basic concepts of mediation to the employees in the agency and noted the voluntary nature of participation in the mediation process: "When a work place conflict arises, a state agency can contact the Commission requesting the assistance of a third party neutral. Participation in this informal process will be voluntary for all parties and will not affect a party's right to pursue a traditional EEO or grievance process."<sup>13</sup>

Under the pilot project, requests for mediation services were to be made by agency employees to the agency coordinator in the three pilot agencies in which an agency coordinator had been appointed.<sup>14</sup> Sometimes those requests would be made directly by the employees involved in the dispute; other times, the referrals would come from other agency employees with knowledge of the dispute. After an initial referral was made to an agency coordinator, the coordinator would make an initial determination as to the suitability of the dispute for mediation, and, if he or she determined that mediation was appropriate, the coordinator would contact the parties to determine their willingness to participate in the mediation process. Only if all parties agreed

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<sup>12</sup> Interview with Maria Mone, Director, Ohio Commission on Dispute Resolution and Conflict Management, and Maggie Lewis, Associate Director, Ohio Commission on Dispute Resolution and Conflict Management (Feb. 6, 1998). It should be noted that the individual who participated in a mediation session without prior formal training did so as a comediator, working with an experienced mediator.

<sup>13</sup> Literature on State of Ohio Shared Neutrals Pool, distributed by the Ohio Department of Commerce (undated) (on file with author).

<sup>14</sup> Requests for mediation services from an agency other than one of the pilot agencies were generally made directly to the Commission. A Commission employee would then serve the role of coordinator in handling the referral, contacting the other parties to the dispute to determine willingness to participate in mediation and contacting mediators to provide mediation services for the dispute.

to mediation services would the dispute be formally referred to the pilot project.<sup>15</sup>

In order to refer a dispute to the pilot project, an intake form would be completed by the agency coordinator. This form requested information on the nature of the dispute, the identity of the agency coordinator or other referral source, and the identity of the parties to the dispute.<sup>16</sup> After completion of these intake forms, the forms would be provided to the Commission, which would then select two neutrals from the shared pool of mediators to be assigned to the dispute. The selection of two neutrals allowed for use of a comediation format, in which two mediators were given responsibility for and provided mediation services for each dispute. One mediator was to be designated as the "lead" mediator, who would be given responsibility for contacting the parties, answering questions about the mediation process, and scheduling a time and place for the initial mediation session.<sup>17</sup>

The mediation process was to be conducted using a "seven-step problem-solving process," by which the mediators were to assist the parties in articulating their view of the dispute, in identifying possible resolutions of the dispute, and in making choices among possible alternative resolutions.<sup>18</sup> If this

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<sup>15</sup> See Diagram for Process for Workplace Mediation Pilot Project (undated) (on file with author).

<sup>16</sup> Request for Mediation/Facilitation forms were completed for each of the cases formally referred under the pilot project for the period of the evaluation and are on file with the author. Those forms, however, contain confidential information and, therefore, are not open to public inspection.

<sup>17</sup> See Diagram for Process for Workplace Mediation Pilot Project, *supra* note 15.

<sup>18</sup> The seven-step problem-solving process is described as follows:

Stage 1. INTRODUCTION

This is the first formal contact between the parties and the mediator. The mediator should identify the parties, define mediation, explain the mediation process, and establish ground rules.

Stage 2. PROBLEM DETERMINATION

The mediator asks each party to relate his/her account of the dispute. The mediator's function is to facilitate the flow of this information by using effective communication skills.

Stage 3. SUMMARIZING

After each party has completed his/her description of the dispute, the mediator should summarize. The words used by the mediator in the summary must be neutral and nonjudgmental. It is important that the summary accurately reflect the content and emotion of each party's description.

Stage 4. ISSUE IDENTIFICATION

The mediator assists the parties in identifying all presenting and underlying issues that will be addressed in the mediation.

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process resulted in an agreement to resolve the dispute, the agreement was then to be reduced to writing, with the written mediation agreement to be retained by the parties and not by the mediators or the Commission. A follow-up mediation session was to be scheduled if determined to be needed by the parties and the mediators. At the end of the mediation session, evaluation forms were to be completed by the parties and the mediators, and the mediators were to report the results of the mediation process to the Commission. The Commission would then report on the results of the mediation process to the project coordinators.<sup>19</sup>

### III. THE EVALUATION OF THE WORKPLACE MEDIATION PILOT PROJECT

#### *A. Methodology for Collection of Data for Project Evaluation*

The Ohio Commission on Dispute Resolution and Conflict Management provided a grant to The Ohio State University College of Law in order to conduct an evaluation of the Commission's Workplace Mediation Pilot Project. The period for the grant and evaluation was from June 30, 1997 to May 31, 1998.<sup>20</sup> The final report on the evaluation project was provided to the Commission on May 31, 1998.<sup>21</sup>

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#### Stage 5. GENERATION AND EVALUATION OF ALTERNATIVES

The parties are responsible for proposing their own alternatives for resolving their dispute. The parties continue to discuss alternatives that may bring about a resolution of the dispute.

#### Stage 6. SELECTION OF APPROPRIATE ALTERNATIVES

The parties either agree on which alternative(s) will best resolve their dispute or decide that mediation is not the appropriate method for resolving their dispute.

#### Stage 7. CONCLUSION

If agreement is reached, the mediation should conclude with a final restatement and clarification of the terms of the agreement. If agreement is not reached, the mediator should summarize any progress made toward resolving the dispute.

The Seven-Stage Mediation Model (undated) (on file with author).

<sup>19</sup> See Diagram for Process for Workplace Mediation Pilot Project, *supra* note 15.

<sup>20</sup> The grant called for the evaluation project to be conducted in the following four phases:

#### Phase One:

1. Design overall evaluation components for Commission's workplace mediation pilot project.

2. Determine what type or types of data should be collected to evaluate project.

#### Phase Two:

3. Develop methodology, including survey instruments or other data collection.

Information necessary to conduct the evaluation of the pilot project was obtained in personal interviews, in-person and over the telephone, and by survey instruments completed anonymously by the agency coordinators for the three agencies involved in the pilot project, by the mediators who provided mediation services for the pilot project, and by the disputing parties referred to the pilot project.

Each of the agency coordinators responsible for the pilot project at the time of the evaluation was interviewed, as was an individual who had previously served as the agency coordinator for one of the agencies. In the interviews of the project coordinators, information was sought on the following matters: how the pilot project was announced to employees and supervisors within the relevant agency or division or department of the agency; the number of persons trained as mediators within the relevant agency; an evaluation of the mediation training provided to the coordinators; the details of particular mediation cases referred by the coordinators, including the nature of the dispute that prompted the mediation request, a description of the parties involved in the particular mediation case, and a summary of the results of the mediation case; an assessment of why particular cases did not proceed to mediation after being referred to mediation; and suggestions for improvement of mediation services experienced under the Workplace Mediation Pilot Project.

In-person or telephone interviews were also conducted with a number of the mediators who were assigned to cases that were referred to mediation

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instruments, to collect the appropriate data from all parties, mediators, and pilot coordinators.

Phase Three:

4. Collect and analyze the data for all mediations conducted between January 1, 1997 and August 31, 1997.

5. Create evaluation report for all cases mediated between January 1, 1997 and August 31, 1997. Report should include analysis of data collected and a summary of project outcomes.

Phase Four:

6. Develop plan for monitoring program once initial evaluation is completed, including appropriate data collection instruments needed to evaluate program effectiveness.

Grant Award Agreement Between Ohio Commission on Dispute Resolution and Conflict Management and The Ohio State University Research Foundation (June 23, 1997) (on file with author).

<sup>21</sup> L. CAMILLE HÉBERT, FINAL REPORT, EVALUATION OF WORKPLACE MEDIATION PILOT PROJECT OF OHIO COMMISSION ON DISPUTE RESOLUTION AND CONFLICT MANAGEMENT (May 31, 1998) (on file with author). Much of the data analysis and many of the conclusions contained in this Article were initially set forth in that report.



during the relevant time period, regardless of whether those cases in fact were mediated. Two mediators from each of the state agencies involved in the pilot project were interviewed, as were three other individuals who had served as mediators for cases under the pilot project. During those interviews, inquiries were made to obtain the following information: an evaluation of the mediation training provided to the mediators; the details of particular mediation cases referred to the mediators, including the nature of the dispute that prompted the mediation request, a description of the parties involved in the particular mediation case, and a summary of the results of the mediation case; an assessment of why particular cases did not proceed to mediation after being referred to mediation; an assessment of why particular cases were not able to be resolved in mediation; evaluation of the mediator format; and suggestions for improvement of the Workplace Mediation Pilot Project.

Three survey instruments were developed in order to obtain data on the Workplace Mediation Pilot Project from the three different groups of participants in the pilot project. Those groups of participants were agency coordinators, mediators, and parties to the disputes referred to mediation.<sup>22</sup> These survey instruments were distributed to the participants in the pilot project in mid-February 1998 by first-class mail. Participants were provided with a copy of one or more surveys, depending on the nature and extent of their participation in the Workplace Mediation Pilot Project, and were provided with a postage-paid, self-addressed envelope for the return of those surveys. Participants were also provided the option of returning the survey by facsimile. Each of the participants who were provided with surveys was informed that their responses were anonymous and would not be associated in any way with their name. Follow-up letters were sent to all of the participants in the pilot project to attempt to obtain more responses after the initial batch of surveys was returned. The parties returned thirteen out of twenty-seven surveys, for a response rate of forty-eight percent; agency coordinators returned two out of four surveys, for a response rate of fifty percent; and mediators returned fourteen out of twenty-two surveys, for a response rate of sixty-three percent.

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<sup>22</sup> The three survey instruments used to obtain the data from these groups of participants and a summary of the data collected from those survey instruments, are reproduced in Appendices A, B, and C to this Article.

## *B. Analysis of Data Collected for Project Evaluation*

### *1. The Structure and Scope of the Workplace Mediation Pilot Project*

A total of fifteen disputes referred to mediation in connection with the Commission's Workplace Mediation Pilot Project between January 1, 1997 and August 31, 1997 were included in the evaluation. Three of those cases were actually referred to mediation prior to the formal beginning of the pilot project, although those cases were mediated by the same individuals as those who served as the pool of mediators involved in the pilot project. Of those fifteen disputes, six were referred from the Department of Commerce, five were referred from the Department of Human Services, and one case each was referred from the Department of Public Works, the Department of Development, the Counselor and Social Work Board, and the Department of Rehabilitation and Correction. No cases were formally referred from the Environmental Protection Agency, one of the three primary agencies involved in the pilot project during the period selected for the evaluation, although cases from that agency have been referred under the pilot project subsequent to that time period.<sup>23</sup>

The survey sent to agency coordinators under the pilot project sought information concerning the coordinators' assessment of the level of support for the pilot project among interested persons at the agencies involved in the pilot project. With respect to "[a]gency management and officials," one of the respondents indicated that those officials were "[v]ery supportive" while the other respondent indicated that those officials were "[s]omewhat supportive." The level of support of "[a]gency supervisors" was judged to be "[s]omewhat supportive" by one respondent and "[n]ot very supportive" by the other respondent. "Non-supervisory agency employees" were judged to be

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<sup>23</sup> As of February 18, 1999, a total of 44 cases had been referred to mediation under the Workplace Mediation Pilot Project. Of those 44 cases, 16 cases were referred from the Department of Commerce; 10 cases were referred from the Department of Human Services; 4 cases were referred from the Environmental Protection Agency; 3 cases were referred from the Department of Rehabilitation and Correction; 2 cases each were referred from the Counselor and Social Work Board, the Department of Development, and the Department of Youth Services; and 1 case each was referred from the Department of Public Works, the Department of Natural Resources, the Civil Rights Commission and the Bureau of Employment Services. See Workplace Mediation Case Summary (undated) (on file with author). The cases referred under the pilot project subsequent to the period chosen for the evaluation were not included in the evaluation and do not factor into the analysis set forth here, unless expressly noted.

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“[s]omewhat supportive” by one respondent (the other respondent did not answer this question), and “[l]abor organizations and union officials” were judged to be “[v]ery supportive” by one respondent and “[s]omewhat supportive” by the other respondent.

Although it may be difficult to draw general conclusions about the pilot project’s support among agency officials and other interested persons from only two responses by agency coordinators, these results do indicate that, in at least these two agencies, support from agency officials and supervisors could be improved, perhaps by education of those persons. Information obtained from interviews with these agency coordinators suggested on an anecdotal basis that education of certain agency supervisors about the nature of mediation had increased the support of those supervisors for the mediation process and the pilot project. Those same efforts at education might well serve to increase the support for the pilot project among nonsupervisory personnel, including union members and union officials.

The respondents to the agency coordinator survey both indicated that they had fairly extensive experience with mediation prior to their experience with the pilot project; both of the agency coordinator respondents had been previously trained in use of mediation and had mediated a significant number of disputes (twenty-five to thirty and seventy-five, respectively), some of which involved disputes arising in the workplace. In addition to this prior training and mediation experience, the agency coordinators involved in the pilot project had participated in the State of Ohio Interagency Shared Neutrals Mediation Training conducted at Capital University Law School, and at least two of them had acted as mediators in cases referred under the pilot project.

The responding agency coordinators indicated that they had taken a number of actions to promote or explain the Workplace Mediation Pilot Project. Both of the respondents indicated that they had engaged in the following activities: “[h]eld one or more information sessions to introduce the pilot program”; “[h]eld one or more follow-up information sessions subsequent to the introduction of the pilot program”; “[c]onducted or participated in a mediation training session of potential mediators for pilot project”; “[e]ncouraged agency employees to submit appropriate disputes to mediation”; and “[p]ersonally explained mediation process to agency employees.” One of the agency coordinators responding to the survey also reported that he or she had engaged in the following activities: “[p]repared a brochure or other literature about [the] pilot program”; “[c]onducted or participated in a mediation training session of agency employees”; “work[ed] with the union and human resources to encourage mediation”; “explain[ed] mediation to [the] union”; and “prepare[d] cost/benefit analysis” of mediation.

Both responding agency coordinators indicated that they were responsible for the following activities in their role as agency coordinator: “[c]ontacting the parties to the dispute to determine whether they were willing to mediate their dispute”; “[e]xplaining the mediation process to the parties to the dispute”; “[c]ontacting the mediators asked to mediate the dispute”; “[c]ontacting the parties to the dispute to schedule the mediation sessions”; and “[c]ontacting the parties after resolution of the dispute to determine if resolution has been complied with.”

The responses to the survey of mediators under the pilot project indicate that a number of the mediators believed that they were responsible for these same activities. All of the twelve mediator respondents who had been called to mediate a dispute under the pilot project indicated that they or their comediators were responsible for some or all of these activities. Eleven respondents indicated that they were responsible for “[e]xplaining the mediation process to the parties”; nine respondents indicated that they were responsible for “[c]ontacting the parties to the dispute to schedule the mediation sessions”; eight respondents indicated that they were responsible for “[c]ontacting the other mediator involved in the mediation” and “[c]ontacting the parties to the dispute to determine whether they were willing to mediate their dispute.”

The fact that both the agency coordinators and the mediators indicated that they were responsible for these activities may suggest either that there is some duplication of efforts in connection with the administrative details of the pilot project or that there is some confusion about who is responsible for what activities. Either of these possibilities suggests that the administration of the pilot program may be more cumbersome than is necessary and calls for clarification of the relative responsibilities of the agency coordinators and the mediators with respect to these tasks.

## *2. Nature of Disputes Referred to Mediation*

Most of the parties responding to the survey indicated that they did not have prior experience with mediation or with the pilot project before the referral of their dispute to mediation, although three of the responding parties indicated that they had prior knowledge of the pilot project. The responding parties became aware of the existence of the pilot project in a number of ways. For five of those parties, the existence of the pilot project was made known to them by an agency coordinator for the project; three of the parties had the pilot project explained to them by the mediator of their case. The project was made known to one responding party by an EEO officer, and another responding party became aware of the pilot project through a training or other

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session explaining the pilot project. Another party respondent became aware of the pilot project from his or her supervisor, while another was made aware of the pilot project by his or her union steward. Two of the party respondents indicated that they became aware of the pilot project through a brochure on the project.

It appears that most of the disputes referred to mediation under the pilot project were of a more informal nature, involving personality conflicts and work disagreements, rather than more formal disputes such as those likely to result in formal grievances or charges. The responses to the mediator survey characterized the disputes referred to mediation as most often involving disputes concerning “[d]isagreement over work or job assignment” (nine responses) and “[p]ersonality conflict or disagreement over work styles” (eleven responses); one mediator characterized the dispute as a “[d]isagreement over disciplinary action,” and one mediator indicated that the dispute involved a “[c]laim of racial, sexual, or other type of discrimination.” The responses to the party survey characterized the disputes referred to mediation as involving “[p]ersonality conflict or disagreement over work styles” (ten responses), “[d]isagreement over work or job assignment” (five responses), “[d]isagreement concerning disciplinary action” (three responses), “[d]isagreement over conditions of personal worksite” (one response), and “[c]laim of racial, sexual, or other type of discrimination” (one response).

On the other hand, some of the disputes referred to mediation might have resulted in the filing of formal complaints or grievances if they had not been resolved in mediation, and at least one dispute not resolved by mediation did result in the filing of a formal dispute, according to the responses to the party survey. Three of the party respondents indicated that it was “[v]ery likely” that they would have filed a formal complaint or grievance concerning the dispute if resolution had not been reached, and one of those parties indicated that he or she did in fact file a formal complaint or grievance over an issue on which resolution was not reached during the mediation. One party respondent indicated that it was “[s]omewhat likely” that he or she would have filed a formal complaint or grievance if resolution had not been reached.

The pilot project was used not only to address disputes among coworkers, but also to address disputes arising out of the superior-subordinate relationship. In fact, the disputes referred to mediation under the pilot project most commonly involved employees in superior-subordinate relationships to each other. According to the responding mediators, the types of parties most often involved in the disputes referred to mediation were “[c]o-workers” (seven responses), “[d]irect supervisor and subordinate” (nine responses), and “[u]nion member” (three responses). The parties involved in the disputes for which party responses were received primarily were currently or had been in

superior-subordinate relationships to each other, although three of the disputes also involved a coworker.

The disputes referred to mediation under the pilot project had been in existence for varying lengths of time prior to referral to mediation. At the time of referral of the case to mediation, two of the party respondents indicated that the dispute had been in existence "[b]etween one week and one month," five of the party respondents indicated that the dispute had been in existence "[m]ore than one month but less than six months," four party respondents indicated that the dispute had been in existence "[b]etween six months and one year," and two respondents indicated that the dispute had been in existence for more than one year at the time of referral of the dispute to mediation under the pilot project.

### *3. Disposition of Disputes Referred to Mediation and Explanations for Those Dispositions*

According to information obtained from interviews with the pilot coordinators and from the records of the Commission, of the fifteen cases referred to mediation, nine of those cases actually went to mediation, while in six of those cases, one or both of the parties to the dispute ultimately decided not to submit the dispute to the mediation process. In some of the six cases not mediated, scheduling difficulties apparently resulted in delays, during which the parties either decided not to mediate the case or the dispute otherwise resolved itself, at least temporarily, because one or more of the parties to the dispute was transferred to a different position or became absent from the workplace because of disability or other type of leave. In other cases, the parties to the dispute were apparently able to reach their own resolution of the dispute during the delays caused by scheduling problems. There is some indication, however, based on information obtained in interviews with the mediators, that some of those scheduling difficulties may have been attributable to the reluctance of one or both parties to participate in the mediation process. In addition, in one of the cases not mediated, one of the parties, after initially agreeing to submit the dispute to mediation, refused to do so unless the other party met conditions to which that other party was not willing to agree.

The responses to the party survey by respondents whose disputes were not mediated provide some corroboration of the reasons given by the mediators as to why some disputes referred to mediation were not actually mediated. Three of those party respondents indicated that the dispute was not mediated because their opposing party left the position that he or she had held or left employment altogether; another party respondent indicated that his or her

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opponent had changed his or her mind about mediation after the dispute had been referred to the pilot project.

The two responding agency coordinators gave explanations for the failure of some disputes referred under the pilot project to be submitted to mediation or to actually be mediated. The following reasons were given by one or more of the responding agency coordinators as to why they believed that parties were reluctant to submit disputes to mediation: “[d]id not believe that mediation would work to resolve the dispute” (two responses); “[d]id not have sufficient understanding of the mediation process”; “[d]id not believe that other parties to [the] dispute would agree to mediation”; and “[d]istrust of other parties—managers feel being asked to mediate is a slap in the face.” With respect to reasons why disputes referred to mediation were not actually mediated, the responding agency coordinators gave the following reasons why they believed that mediations had not actually occurred: “[o]ne or more of the parties to the dispute changed his or her mind after referral of the dispute to mediation” (two responses); “[t]he dispute was resolved prior to the actual mediation of the dispute”; and the parties engaged in “[l]ip service only when they agreed to mediate.”

The agency coordinators responding to the survey also gave their assessment of the types of disputes for which parties are most likely and least likely to agree to mediation and the characteristics of parties most likely and least likely to agree to submit their disputes to mediation. One respondent indicated that disputes involving “[p]ersonality conflict or disagreement over work styles” and “[c]laim of racial, sexual, or other type of discrimination” were most likely to be submitted to mediation, while disputes involving “[d]isagreement concerning disciplinary action” were least likely to be submitted to mediation. The other respondent indicated that the disputes most likely to be submitted to mediation were those involving “[d]isagreement concerning disciplinary action,” “[p]ersonality conflict or disagreement over work styles,” and “[c]laim of racial, sexual, or other type of discrimination,” while the disputes least likely to be submitted to mediation were those involving “[d]isagreement over work or job assignment” and “[d]isagreement over job benefits.” With respect to the parties most likely and least likely to agree to mediation, one respondent indicated that “[a]gency supervisors” were most likely to submit disputes to mediation and that “[a]gency management or officials” were least likely to do so. The other respondent indicated that “[n]on-supervisory employees” and “[u]nion members” were most likely to agree to mediation and that “[a]gency management or officials” and “[a]gency supervisors” were least likely to agree to mediation. These disparate results between the responses of the two agency coordinators indicate that it may be

difficult to generalize among different agencies about the nature of the disputes and the nature of the parties most likely to be involved in mediation.

Each of the twelve respondents to the mediator survey who had been called to serve as a mediator under the pilot project reported that one or more of the parties to the dispute "were reluctant to or had reservations about submitting the dispute to mediation." The most common explanation given by the mediators for the reluctance or reservation of the parties was that the parties "[d]id not have sufficient understanding of the mediation process" (nine respondents). Other explanations given by the mediators for the reluctance or reservations of parties were the following: "[d]id not trust in confidentiality of mediation" (two respondents); "[d]id not believe that mediation would work to resolve the dispute" (four respondents); "[d]id not believe that other parties to dispute would agree to mediation" (three respondents); "[b]elieved that he or she would have to give up [the] right to file grievance or formal complaint to participate in mediation" (one respondent); "[t]hought that problem had been resolved" (one respondent); and "obstinate, angry personality" (one respondent).

Although it is difficult to reach conclusions from the party surveys returned about the attitudes of parties generally toward the mediation process and their willingness or reluctance to participate in that process, some information can be gleaned from the survey responses concerning the attitudes of at least some of the parties. Of the thirteen respondents who were parties to disputes referred to mediation under the pilot project, seven of the respondents indicated reluctance or reservations about the mediation process and five of the respondents indicated no such reluctance or reservations. The respondents who indicated that they did have reluctance to participate in mediation reported that the source of their reluctance or reservation was one or more of the following: they "[d]id not believe that mediation would work to resolve [the] dispute" (five responses); "[d]id not believe that other party or parties to the dispute would agree to mediation" (six responses); "[d]id not trust in confidentiality of mediation" (one response); "[b]elieved that [they] would have to give up [the] right to file a grievance or a formal complaint to participate in mediation" (two responses); "[w]orried about possible retaliation by my supervisor" (one response); and "[d]id not believe the other party would live up to the findings of the mediator" (one response).

Two of the parties expressing initial reluctance to participate in mediation indicated that one of the reasons for that reluctance was that they "[d]id not have sufficient understanding of the mediation process." On the other hand, seven of the thirteen party respondents indicated that they did "feel that [they] had an understanding of the process of mediation and what was going to occur in mediation" at the time of referral of the dispute to mediation. The six party



respondents who indicated that they did not have an understanding of the mediation process at the time of referral of the dispute to mediation indicated that they would have liked to have had additional or better information about “what to expect” and “the process” of mediation. Eleven of the thirteen party respondents believed that the mediation process was voluntary at the time of the referral of the dispute to mediation; two did not believe that the process was voluntary.

While lack of a better understanding about the nature of mediation may not account for a large proportion of the reluctance of parties to submit their disputes to mediation, the survey results do suggest that at least some of the parties would have liked to have had a better understanding of the mediation process, in particular what they should expect from the mediation process, prior to agreeing to submit their disputes to mediation. A better understanding up front of the nature of mediation and its limits, particularly with respect to the type of resolution likely to occur, might have avoided some of the dissatisfaction evident in the survey responses of a few of the party respondents.<sup>24</sup>

#### *4. The Mediation Process as Experienced by the Participants*

Some information about the mediation process, as it was experienced by the mediators and by the parties, can be obtained from the survey responses of mediators and parties. Eight mediator respondents reported information about the duration of mediations conducted under the pilot project in which they participated as mediators. Eight of the respondents reported that the mediation in which they had participated was conducted in a single session lasting between one and five hours; one of those respondents also reported participation in a second mediation that was conducted in two sessions lasting a total of five to ten hours. The entire mediation process, from initial referral of the dispute to mediation to resolution or failure of resolution of the dispute, was reported to be “[l]ess than one week” by one mediator respondent, “[o]ne week to two weeks” by four mediator respondents, and “[t]wo weeks to one month” by four mediator respondents.

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<sup>24</sup> See Chris Guthrie & James Levin, *A “Party Satisfaction” Perspective on a Comprehensive Mediation Statute*, 13 OHIO ST. J. ON DISP. RESOL. 885, 888, 899 (1998) (noting first that party satisfaction with mediation is related in part to the extent to which that party’s actual experience compared with his prior expectations; noting second that party satisfaction with mediation experience may be enhanced by premediation education in order to enhance understanding of the mediation process).

Similar information about the duration of mediations conducted under the pilot project was disclosed by the results of the party survey. The nine party respondents whose disputes had actually been mediated all reported that they were involved in a single session lasting from one to five hours. Two party respondents indicated that the period of time from initial referral of the dispute to mediation to resolution or nonresolution of the dispute was "[l]ess than one week," two indicated that the time was "[o]ne to two weeks," and five respondents put the time at "[t]wo weeks to one month."

The mediators responding to the survey reported a high level of party participation and apparent satisfaction with the mediation process. The mediator respondents generally reported that "[a]ll of the parties fully participated in the mediation process," although one mediator reported that "[s]ome, but not all, of the parties fully participated in the mediation process." Seven mediator respondents reported that "[b]oth parties appeared to be comfortable with the mediation process," while two reported that "[a]t least one, but less than all, parties appeared to be comfortable with the mediation process." Six of the mediator respondents reported that the parties appeared to be "[v]ery satisfied" with the mediation process, while three reported that the parties appeared to be "[s]omewhat satisfied" with the mediation process.

The party respondents provided only a slightly less positive view of the mediation process. Seven of those party respondents indicated that they felt that they had had "enough opportunity to tell [their] views about the dispute during the mediation," while two reported that they did not.<sup>25</sup> Four of the party respondents indicated that they felt that the mediators involved in the dispute "understood [their] views of the dispute" "[v]ery well," while four party respondents indicated that the mediators "[s]omewhat" understood their views of the dispute and one party respondent indicated that the mediators understood that party's views "[n]ot at all."<sup>26</sup> Each of the nine party respondents whose disputes were actually mediated indicated that the mediators were "fair and impartial." Four of those respondents rated the mediation process as "[v]ery fair" overall, while two of those respondents rated the mediation process as "[s]omewhat fair" overall.

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<sup>25</sup> One of the party respondents who indicated that he or she did not feel that there was sufficient opportunity to tell his or her views of the dispute during the mediation explained that: "I believe that [the] mediator was not interested in the issues that both parties needed to talk about."

<sup>26</sup> The party respondent who felt that the mediators did not understand that party's view of the dispute explained that: "Both mediators addressed methods of handling conflicts when they [arose]" but "did not address the [underlying] distrust and dislike the parties felt."

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In describing the conduct of the mediators during the mediation process, seven of the nine party respondents whose disputes had actually been mediated reported that one or more of the mediators had engaged in the following actions: “[s]uggested possible options for resolution or settlement of the dispute” (seven respondents); “[e]valuated the merits of the dispute” (five respondents); “[r]ecommended a particular resolution or settlement of the dispute” (five respondents); and “[r]evealed his or her views about the dispute” (four respondents).

In describing their own conduct, the seven mediator respondents involved in cases that were actually mediated generally indicated in the following ways that they did not engage in those activities described by the party respondents: six of the mediator respondents indicated that they personally did not engage in any of those activities during the mediation process; one of the respondents indicated that he or she did not personally engage in those activities but that the other mediator “[s]uggested possible options for resolution or settlement of the dispute”; and one respondent indicated that he or she “[r]ecommended a particular resolution or settlement of the dispute” and “[s]uggested possible options for resolution or settlement of the dispute,” while the other mediator involved in that same mediation engaged in both of these activities and “[e]valuated the merits of the dispute.”

This discrepancy between the responses of the mediators and the responses of the parties with respect to the characterization of the mediators’ behavior may have a number of explanations. First, because of the response rate to both the mediator and the party surveys, it is in fact possible that none of the mediations being described by the parties were the same mediations as those described by the mediators. An equally plausible explanation, however, is that the parties and the mediators had different perceptions about what was actually occurring in the mediations conducted under the pilot project. The mediators, whose training may have suggested to them that it would be inappropriate to engage in evaluative activity or suggest or recommend possible resolutions, may have been less inclined to recognize that they were engaging in such activity or to admit to engaging in such activity, thereby underestimating the degree to which those activities occurred. The parties, on the other hand, may have overestimated the degree to which those activities occurred because they may have misinterpreted the behavior of the mediators as evaluative or suggestive of particular resolutions when in fact no such action was intended by the mediators.

These disparate results, however, do suggest the need to obtain information from both parties and mediators in order to accurately assess the experiences of participants in the mediation process. In general, it appears that mediators were somewhat more positive about the mediation process than the

parties themselves and may have somewhat overestimated party satisfaction with the mediation process.

### *5. Resolution of Disputes in Mediation*

In eight of the nine disputes that were actually submitted to mediation under the pilot project during the evaluation period, a resolution was reached that was reported by the agency coordinators to be satisfactory to all of the parties to the dispute. The other mediated case reportedly did not yield a resolution acceptable to one of the parties to the mediation. In a number of the cases in which a resolution apparently satisfactory to all parties was reached, one or more of the parties to that dispute had initially expressed a great deal of reluctance to submit the dispute to mediation. Accordingly, it appears that those parties were able to overcome their initial reservations about the mediation process in order to reach ultimate resolution of their disputes.

The responses to the mediator survey indicate a general perception among the mediators that the parties appeared to be satisfied with the mediation process and the results of the mediations. Of the eight mediator responses involving disputes that actually were mediated, each respondent indicated that "[b]oth parties appeared to be satisfied" with the resolution of the dispute. Each of these mediator respondents also indicated that "[t]he resolution was fair and equitable to both parties." Five of the respondents reported their belief that "[b]oth parties are likely to comply with the resolution of the dispute," while three respondents indicated that "[s]ome, but not all, of the parties are likely to comply with the resolution of the dispute."

While it is difficult to reach firm conclusions about the parties' general satisfaction with their resolutions because of the limited number of responses, there is some indication that the parties themselves were less satisfied with the resolutions reached in mediation than the mediators thought them to be. Of the thirteen party respondents, nine of them had been parties to disputes that were actually mediated. Of those nine, two reported that "[a]greement was reached on all issues." One of those respondents reported that he or she was "[v]ery satisfied" with the resolution of the dispute, both immediately after resolution and at the time the survey was completed; that party also reported that the resolution had been complied with by all parties to the dispute. The other respondent reporting agreement on all issues indicated that he or she was "[s]omewhat satisfied" with the resolution of the dispute both immediately after resolution and at the time that the survey was completed. The other seven party respondents whose disputes actually went to mediation reported "[a]greement on some but not all issues"; those respondents each reported that they were "[s]omewhat satisfied" with the resolution of the dispute either

immediately after mediation or at the time the survey was completed. Of those seven respondents, six indicated that they had themselves complied with the resolution of the dispute and four of them indicated that the other parties to the dispute had complied with the resolution of the dispute. One of those party respondents indicated that one or more of the issues in the dispute had not been resolved because another party should have been present at the mediation but was not.

### *6. Perceptions of Parties About Mediation Process*

Of the thirteen respondents to the party survey, one respondent indicated that he or she was “[v]ery satisfied” with the mediation process overall, seven respondents indicated that they were “[s]omewhat satisfied” with the mediation process overall, and two respondents (both of whose disputes were not actually mediated) indicated that they were “[v]ery unsatisfied” with the mediation process overall. In response to the question of whether the mediation process helped the party “better understand the views of the other party or parties to the dispute,” two respondents answered “[y]es,” four respondents answered “[s]omewhat,” and three respondents answered “[n]o.” Four respondents indicated that their relationship with the other party or parties to the dispute was improved after participation in the mediation process, while five respondents indicated that “[t]here was no change in the relationship after participation in mediation.” One party respondent indicated that the relationship was worse after participation in the mediation process.

Another possible measure of parties’ satisfaction with their experiences with the Workplace Mediation Pilot Project is their willingness to choose mediation again if they were involved in another dispute and their willingness to recommend mediation to a friend or colleague with a workplace dispute. Of the thirteen party respondents, eight indicated that they would both use mediation again themselves and recommend mediation to others. Three party respondents indicated that they would not choose mediation again and would not recommend it to others involved in disputes. One party respondent indicated that he or she would not choose mediation if personally involved in a dispute and gave a qualified answer (“depends on the situation”) to the question of whether he or she would recommend mediation to others.

The perceptions of the parties with respect to the mediation process does not appear to have differed based on the demographic characteristics of the parties responding to the survey. Of the thirteen parties responding to the survey, four respondents identified themselves as male, eight identified themselves as female, and one declined to specify gender. Of the male respondents, three indicated that they were “[s]omewhat satisfied” with the

mediation process overall; of the female respondents, one indicated that she was "[v]ery satisfied" with the mediation process overall, four indicated that they were "[s]omewhat satisfied," and one indicated that she was "[v]ery unsatisfied." Six of the thirteen party respondents identified themselves as African-American, four as Caucasian, and one as Caucasian and Native American. Of the African-American party respondents, one indicated that he or she was "[v]ery satisfied" with the mediation process overall and five indicated that they were "[s]omewhat satisfied." Of the five Caucasian respondents, only three respondents answered the question about their overall satisfaction with the mediation process; two of these respondents indicated that they were "[s]omewhat satisfied" with the mediation process overall, while one indicated that he or she was "[v]ery unsatisfied." The respondent who identified himself or herself as Caucasian and Native American did not provide an answer to that survey question.

### *7. Mediators with Pilot Project*

A total of nineteen mediators were initially trained in the State of Ohio Interagency Shared Neutrals Mediation Training sessions conducted in January 1997 by Capital University Law School. In addition, three other mediators have mediated cases under the pilot project. One of these three mediators, who is employed by the Commission on Dispute Resolution and Conflict Management, had previously received mediation training at The Ohio State University College of Law. Another of these three mediators, who is employed at the Ohio Supreme Court, received mediation training from another source. The third mediator who mediated a case under the pilot project had not received formal mediation training at the time of the mediation session in which he participated.

A total of fifteen mediators, from the shared neutral pool of twenty-two mediators, participated in one or more of the fifteen cases referred to mediation under the pilot project. Of those fifteen mediators, eleven actually were involved in the mediation of a dispute under the pilot project during the evaluation period. The other four mediators were assigned to cases that were not mediated, although those mediators may have had some initial contact with the parties to the dispute. Of the eleven mediators who actually mediated a dispute, three mediators mediated three disputes each, one mediator mediated two disputes, and seven mediators mediated one dispute each during the period covered by this evaluation.<sup>27</sup> Each of the nine disputes actually

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<sup>27</sup> Some of the mediators who did not mediate a case during the evaluation period may have mediated cases outside of that period.

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submitted to mediation used the comediation format. One mediator, however, indicated that he had been asked to mediate a dispute without a comediator, but that that dispute ultimately did not go to mediation.

The mediator responses to the survey indicate general support for the comediator format. Each of the eight mediator respondents who had actually mediated a dispute reported that they had operated in this format. Four of the mediator respondents indicated that they had taken a "leading role in the mediation process"; the other four respondents indicated that the other mediator had taken the "lead" role. In responding to a question directed at the effect that use of the comediator format had on the resolution of the dispute or the mediation process, eight respondents indicated that the comediator format "[m]ade the mediation process go more smoothly," six respondents indicated that the format "[h]elped in bringing the dispute to resolution," and two respondents indicated that the format "[m]ade the mediation go more quickly." One respondent indicated that the comediator format "[h]elped convey neutral image [with respect to] gender and race."

The responses to the party survey concerning the effects of the comediation format were somewhat more mixed. Of the nine party respondents whose disputes were actually mediated, eight of those respondents indicated that two mediators were involved in the mediation of their dispute, while one respondent reported that more than two mediators were involved. Three of those respondents reported that the involvement of more than one mediator in the mediation of the dispute "[m]ade the mediation process go more smoothly," one respondent indicated that that involvement "[m]ade the mediation go more quickly," and one respondent indicated that it "[h]elped in bringing the dispute to resolution." Two party respondents indicated that the involvement of more than one mediator in the mediation process "had very little effect either way" or made "no difference." One respondent indicated that the involvement of more than one mediator "[m]ade the mediation go more slowly."

These disparate results from the party survey and the mediator survey suggest that the parties who experienced mediation under the pilot project do not value the comediator format to the same degree as do the mediators. However, the majority of the party respondents to this question did provide a positive assessment of that format. In addition, for those parties who viewed the comediation format as making a difference, the reasons they gave for that conclusion, focusing on the utility of two viewpoints and opinions to the mediation process, are also reflected in some of the comments made by the mediators in assessing the utility of the comediation format.

### *C. Conclusions to Be Drawn from the Evaluation*

Some conclusions can be drawn from the data collected under this evaluation. These conclusions relate to the adequacy of the training of the mediators involved, the obstacles involved in the referral and submission of cases to mediation, the utility of the comediator format, the need for follow-up after mediation sessions, and the potential time and cost savings of the Workplace Mediation Pilot Project.

#### *1. Adequacy of Training and Experience of Mediators*

Most of the agency coordinators and mediators had very favorable impressions of the formal shared neutrals training conducted by Capital University Law School immediately prior to the beginning of the pilot project. This sentiment was generally expressed both by those mediators and agency coordinators who had prior mediation experience or training—who therefore had some basis for comparing the training received with their prior experience—and those mediators who did not have prior mediation training or experience. The small group sessions and role-playing experiences were repeatedly mentioned as particularly effective aspects of the training.

One of the individuals interviewed, however, who had extensive prior experience as a mediator, raised some questions about the utility and adequacy of the training conducted to prepare mediators to engage in mediation of the type of disputes most likely to be referred to the pilot project. In particular, the concern was expressed that for disputes with serious issues, including issues of discrimination, the mediation instruction provided in the training sessions might not be sufficient to allow the resolution of those disputes. Another mediator indicated that, while the shared neutrals training provided very good coverage of the fundamentals of mediation, it did not address some of the more advanced issues, particularly those related to mediation of workplace disputes. These comments suggest the utility of follow-up training for mediators and the utility of focusing some portion of the mediation training on issues specific to workplace disputes.

The anonymous survey results also reflect a good deal of satisfaction with the mediation training provided in the Interagency Shared Neutrals Training conducted by Capital University Law School. The agency coordinators and the mediators responding to the surveys generally described the training as “very good” or “excellent.” Other comments were that the training was “comprehensive,” “very beneficial in showing different ways to solving a concern or problem,” and “presented in a very understandable format.” Mediators noted that “[t]he opportunity to role play was critical to a successful



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experience” and called it “the best training I have ever attended.” The few negative comments about the training indicated that “more time could be spent in role playing.” When asked to provide suggestions concerning how to improve the mediation process as experienced under the pilot project, one mediator suggested that additional training be provided at least to those mediators who had not mediated recently.

Another method of “training” was also mentioned by some of the mediators involved in the shared neutrals pool—the practical experience gained by a mediator in actually conducting mediation sessions. Several mediators mentioned the benefits of the comediation format in providing the opportunity for a relatively inexperienced mediator to actually participate in mediation while observing and learning from the actions of a more experienced mediator. By this method, it was suggested that relatively inexperienced mediators could further their training without significant risk that the parties to the dispute being mediated would be disadvantaged by that experience.

One deficiency was noted in the practical training afforded to mediators participating in the shared neutrals pool. That mediator, who had had the opportunity to mediate only a single dispute since the formal training conducted over one year earlier, expressed concern about not having had enough of an opportunity to apply the information learned in the formal training. This mediator expressed the desire to have the opportunity to participate in additional mediation cases. This mediator appeared to be concerned that the passage of time with little opportunity to practice the skills learned in the shared neutrals training may have resulted in a diminution of mediation skill. Similarly, one of the suggestions in the responses to the mediator survey concerning how to improve the process of mediation as experienced under the pilot project was to allow mediators “to be able to use the mediation skills more often.”

### *2. Obstacles in the Referral and Submission of Disputes to Mediation*

There appear to have been several obstacles that operated to decrease the number of cases referred to mediation under the Workplace Mediation Pilot Project and the number of referred cases that actually were mediated. Among these obstacles may have been insufficient promotion of the mediation pilot project in some agencies, lack of understanding of or hostility to mediation by some supervisors and employees, and administrative difficulties, including difficulties in scheduling mediation sessions in a timely manner.

Some of the difficulties experienced in scheduling the mediation sessions may in fact have been related to the two other obstacles discussed. That is, parties may have been expressing their reluctance to submit disputes to mediation by their expressed inability to find a suitable time to participate in a mediation session. On the other hand, some of the scheduling difficulties appear to have been related to administrative problems created by the fact that the mediators were given responsibility for setting up and scheduling the mediation sessions.

For example, one mediator reported that when he was asked to participate in a mediation of a dispute, he was given almost no information about the dispute and then received a call inquiring about why he was not present at the mediation session, even though he had never received notification that the mediation had been scheduled for a particular date and time. Another mediator expressed concern that there had been a delay experienced in scheduling of mediation sessions because he was personally responsible for contacting the parties to the dispute, a task that often was put off because of the demands of other job responsibilities.

It is not clear whether these problems are the inevitable result of working out the details of a new program or whether they are indicative of continuing difficulties with the administration of the pilot project. In addition, as noted above, there appeared to be either confusion about or overlap in the responsibilities of the mediators and the agency coordinators with respect to the administrative details of the pilot project, in that the survey responses of both the agency coordinators and the mediators indicated that they were responsible for those administrative details. Clarification of the responsibilities of each of the participants in the pilot project may help to alleviate some of these concerns. In addition, it may be desirable to provide more administrative support to the mediators in fulfilling their responsibilities under the pilot project, or even to assign those administrative responsibilities to persons other than the volunteer mediators.

An issue of concern is that one of the agencies chosen for the Workplace Mediation Pilot Project did not formally refer a single dispute to mediation during the eight months of the evaluation period, although the agency coordinator for that agency did indicate that she had made an informal referral of a dispute to the Commission. It is difficult to know precisely what caused this failure, although it is true that the agency coordinator for this agency during the evaluation period was not the original agency coordinator, who had been heavily involved in the formation of the pilot project. However, the

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coordinator for this agency during the evaluation period appeared to be committed to the concept of mediation.<sup>28</sup>

The failure of this agency coordinator to refer any cases to mediation, at least through the formal referral process, may have been a result of several factors. One individual from this agency indicated that the lack of referred cases might have been the result of intra-agency tensions and problems unrelated to the pilot project. It is likely that an agency coordinator distracted by intra-agency issues would be unable to devote the time and energy needed to make the pilot project a success. Another possible explanation for the lack of disputes referred to mediation from this agency may be that the culture within the agency made it more likely that disputes within the agency would be resolved within the agency rather than referred outside. One individual from this agency indicated that there were relatively few grievances filed by agency employees, suggesting a culture of attempting to resolve disputes before they reached the point of a grievance or other formal complaint. Discussions with other agency representatives suggested that the progression of a dispute to the stage of becoming a formal complaint might have been viewed by agency management as a failure on the part of the supervisors and employees involved to deal with that dispute at any earlier stage. This culture, as well as the reported use of facilitation techniques to resolve disputes arising within the agency, might well explain the lack of referrals from this agency.<sup>29</sup>

Even in the other two agencies involved in the pilot project, from which a number of disputes had been referred during the evaluation period, there was some sense among the agency coordinators and the mediators from those agencies who were interviewed that there had been insufficient promotion of the Workplace Mediation Pilot Project. Although the pilot project was introduced with some fanfare at its inception, there had been little additional information provided to agency employees and officials, at least in one of the agencies. This lack of additional promotion of the pilot project and of mediation may have resulted in a lack of understanding and awareness of the process of mediation, its advantages, and even its availability. Some of the reluctance of parties to participate in mediation of disputes appears to be caused, at least in part, by the fact that the parties did not really understand

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<sup>28</sup> Since the end of the evaluation period, another person has assumed the role of agency coordinator for that agency. That individual was also trained as a mediator during the initial Ohio Interagency Shared Neutrals Training sessions conducted in January 1997.

<sup>29</sup> Since the end of the evaluation period, four disputes have been referred to the Workplace Mediation Pilot Project from this agency. Each of those disputes was referred after a new coordinator was appointed for this agency.

what mediation is and how it could assist them in the resolution of their disputes.

This reluctance to engage in mediation was not confined to nonmanagement employees, but seemed to be reflected in the actions of even relatively high-ranking agency officials. Although the agency coordinators indicated that the agency directors were supportive of mediation and of the pilot project, those coordinators indicated that many other agency officials were not supportive and were actually hostile to and mistrustful of mediation. At least part of this hostility appeared to be attributable to a lack of understanding of the mediation process and how it relates to other methods of resolution of disputes, including grievance procedures. In some instances, this reluctance and hostility might well be overcome by more information and training directed at these agency officials. For example, some agency officials and supervisors who initially expressed hostility or reluctance to engage in mediation reportedly changed their attitudes toward mediation upon receiving more information about the process or by actually obtaining mediation experience.

The agency coordinators who responded to the anonymous survey suggested that more promotion and marketing of the project be undertaken at a high visibility level, such as by the governor's office, as a method of improving the Workplace Mediation Pilot Project. Two of the respondents to the mediator survey gave similar suggestions for promotion of the pilot project at a high level and marketing of mediation to managers as a method for improvement of their workplaces.

### *3. The Utility of the Comediator Format*

The comediator format was reported to be effective by almost every mediator who was involved in a dispute actually submitted to mediation during the evaluation period who was either interviewed or who responded to the mediator survey. The perceived advantages of this format included the opportunity for a less experienced mediator to obtain training from a more experienced mediator in a relatively risk-free setting and the ability of two mediators to more effectively pick up on the verbal and nonverbal cues given by parties in the mediation process. At least one of the mediators interviewed expressed the opinion that mediation conducted in a single-mediator rather than a comediator format would require the use of a much more skilled and experienced mediator than is necessary in the comediation format.

Another advantage of the comediator format cited by the mediators involved in the pilot project was the ability of two mediators to bring more perspectives to an issue than would be possible with the involvement of only

a single mediator. This characteristic of the comediator format appears to have been particularly important in cases that involved allegations of or contained undercurrents of discriminatory treatment. For example, in a case in which female subordinates believed that the actions of their male supervisor were motivated by gender bias, the mediators of that dispute indicated that it was critical to the resolution of the dispute that one of the mediators was male and the other female. Other mediators suggested that this same benefit could be gained by the comediator format when issues of race discrimination or even age discrimination were involved.

The pilot project appears to have been quite successful in achieving diversity among its panel of mediators generally and with respect to the mediators assigned to particular disputes to be mediated. The responses to both the mediator and the party surveys provided demographic information with respect to the mediators and the parties; those responses indicated that the two mediators chosen for a dispute were generally of different races or genders or both and that one of the mediators was generally of the same race or gender as at least one of the parties, particularly when at least one of the parties was a member of a minority racial group.

Although the parties were not asked to address the effect of the race or gender of the mediators on the mediation process or the resolution of the dispute, some of the party respondents did indicate that the mediation process was improved by the existence of more than one mediator because different opinions and perspectives were offered by the mediators. One party respondent, whose dispute was mediated by mediators of different genders and races, indicated that: "I believe that at least two mediators are a must in order to be as objective as possible. One may bring up other viewpoints that the other does not. You need more than one for a more positive and thorough mediation." Another party respondent, whose dispute was also mediated by mediators of different races and genders, commented that the involvement of more than one mediator provided "[d]ifferent points of view and options with opinions." While race and gender differences are not the only manner in which different viewpoints may be obtained, the pilot project's efforts to achieve diversity among its mediators appears to be a very important part of the positive reaction of at least some of the parties to disputes submitted to mediation under the pilot project.<sup>30</sup>

On the other hand, one mediator interviewed expressed some reservations with the use of the comediator format to attempt to include multiple

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<sup>30</sup> See generally ROGERS & MCEWEN, *supra* note 4, § 6:09 (noting that the recognition of the cultural differences in dispute resolution styles suggests importance of maintaining diversity in the pool of mediators).

perspectives among the mediators, particularly with respect to race, ethnicity, or gender issues. One mediator indicated that his experience with the comediator format, in which a mediator of the same racial category of the two parties to the dispute was brought in in order to provide this different perspective, actually worked to the detriment of the process because one of the parties directed all of her comments to the other comediator, who may not have been trained in mediation prior to the time of the mediation in question. A review of the completed surveys returned suggests that this experience may have been an isolated occurrence.

It is likely that the comediator format does impose some costs on the parties in terms of delays and difficulties of scheduling the mediation sessions, which appears to have some connection with the failure of some parties to ultimately submit their disputes to mediation. Although none of the mediators directly raised this issue as a problem caused by the comediator format, it is reasonable to assume that this format does contribute to some of the scheduling problems experienced under the pilot project. One mediator interviewed indicated that he had actually conducted a mediation session in a single-mediator format—with the consent of the parties—because of the unavailability of the other mediator assigned to the dispute. While this step might avoid some of the problems of delay likely caused by the comediator format—and the possibility of taking this step was cited as one advantage of the comediator format by one mediator interviewed—it also eliminates the substantial advantages of the comediator format.

#### *4. The Need for Follow-Up After Mediation Sessions*

Several, but not all, of the agency coordinators and mediators interviewed indicated that they conducted follow-up inquiries with parties whose disputes had been mediated to determine whether the resolutions agreed to in the mediations had been adhered to and remained satisfactory to the parties over time. The individuals who had conducted this follow-up appeared to have a better and more realistic appraisal of the mediation process than the individuals who had not engaged in this activity.

The results of the survey of mediators indicate that follow-up with the parties had not occurred, at least by the mediators, in a number of the cases mediated under the pilot project. Of the responses to the mediator survey, eight mediators reported that cases to which they had been assigned actually were mediated. Of those eight responses, five mediators indicated that they had not had any communication with the parties to the dispute after the end of the mediation process, while three indicated that they had had such

communication with at least one of the parties to the dispute in the form of telephone conversations.

The effectiveness of a mediation program cannot be assessed based on party satisfaction or willingness to reach a settlement only at the time that a resolution is first reached. Instead, whether a particular mediation session was successful depends on the satisfaction of the parties with the result over time and the degree to which there was adherence to the agreed resolution. What happens after a mediation is concluded affects party opinion of the mediation process and resolution and the willingness of a party—and other parties who learn of the results of mediation—to submit a future dispute to mediation. Accordingly, a formal or informal follow-up inquiry should be made part of the pilot project, if such a follow-up is not already expected, and all agency coordinators and mediators should be made aware that this step is to be taken and who will have responsibility for conducting follow-up with the parties.

### *5. Potential Time and Cost Savings of the Pilot Project*

It is very difficult to make an accurate assessment of the potential time and cost savings for agencies associated with the Workplace Mediation Pilot Project because it is difficult to accurately assess the costs and time expenditures incurred by the project and the costs and time saved by mediation of disputes that might otherwise have become the subject of formal complaints or grievances or have simply remained unresolved.

The costs of the pilot project, other than the costs borne directly by the Commission, appear to be mainly those associated with time spent by the agency coordinators and the mediators in connection with the pilot project; those persons, who are state employees not separately compensated for their work under the pilot project, are spending time on this project that would presumably otherwise be used to perform their other job duties. The actual time spent in the mediation process appears to have varied widely for the different mediators, but no mediator in this pilot project mediated more than three disputes during the eight-month evaluation period. The time spent in the actual mediation sessions averaged between one and five hours, although substantial preparation and other time may have been spent by some of the mediators on administrative and other matters.

The costs avoided by the pilot project are even more difficult to assess. The disputes referred to mediation include some that had been ongoing in the workplace for a substantial period of time prior to the referral of the dispute to mediation—for at least six parties, the dispute had been in existence over six months and, in two instances, for over a year. The continuing time expenditures caused by an ongoing dispute can be considerable. Accordingly,

to the extent that the pilot project resulted in the successful resolution of those disputes, considerable costs at least in terms of time were likely avoided. In addition, at least four of the parties indicated that they were very likely or somewhat likely to have filed a formal complaint or grievance if the dispute had not been fully or partially resolved through the mediation process; the real costs associated with the avoidance of those formal grievances or complaints could also be considerable.

#### IV. RELEVANCE OF EXPERIENCE UNDER THE WORKPLACE MEDIATION PILOT PROJECT TO OTHER MEDIATION PROGRAMS

Because of the relatively small number of cases referred to the Workplace Mediation Pilot Project during the evaluation period, it may be difficult to extrapolate the results of the evaluation more generally with respect to a larger pool of state agencies that might participate in a mediation program, of state employees who might be encouraged to submit their disputes to mediation, and of the mediators who might mediate those disputes. On the other hand, there are some patterns that can be detected with respect to the first fifteen cases referred to mediation in connection with the pilot project, on which the evaluation discussed in this Article was conducted, and the next twenty-nine cases referred to mediation under the pilot project.<sup>31</sup> These patterns may well suggest that some lessons learned from the evaluation of the pilot project may be useful both with respect to the continuation of the particular mediation program at issue here and with respect to other mediation programs that may be adopted by state agencies in Ohio and in other states.<sup>32</sup>

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<sup>31</sup> As discussed above, the first 15 cases were referred to mediation between January 1997 and August 1997. The next 29 cases were referred to mediation between August 1997 and February 1999.

<sup>32</sup> While some of the conclusions drawn from the evaluation of the Commission's Workplace Mediation Pilot Project may also be relevant to mediation programs adopted by private sector employers, some of the aspects of the pilot project, such as the creation of a shared pool of mediators and the use of mediators from other state agencies to mediate disputes arising from those other agencies, would be difficult to duplicate in a private sector setting. Accordingly, in extrapolating the results of the evaluation to other mediation programs, this Article will restrict its discussion to mediation programs adopted by other public sector employers.



### A. Avoiding Obstacles to the Mediation of Disputes

It appears that the Commission's Workplace Mediation Pilot Project has had some difficulty in sustaining interest in the mediation process on the part of the parties whose disputes are referred to mediation. However, when the parties did sustain their agreement to mediate their dispute, there was a fairly high rate of disputes actually being resolved and a fairly high level of party satisfaction with those resolutions and the mediation process more generally. Of the first fifteen disputes referred to the pilot project, nine were mediated, with resolution of the issues in eight of those disputes, and six did not go forward to mediation.<sup>33</sup> Of the next twenty-nine disputes mediated as of February 23, 1999, thirteen of those disputes were resolved in mediation, two of the disputes were not resolved after mediation, twelve of those disputes did not go forward to mediation, and two of those disputes were still in process.<sup>34</sup> Accordingly, it appears that with all of these disputes, if the dispute actually went forward to mediation, a relatively large percentage of the disputes were resolved to at least the partial satisfaction of the parties, but a substantial portion of the disputes referred to mediation were not actually mediated, even though each of these parties had reached a preliminary agreement to have their disputes referred to mediation under the pilot project.<sup>35</sup>

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<sup>33</sup> Although the Commission's Workplace Mediation Case Summary lists all nine cases as resolved, *see* Ohio Commission on Dispute Resolution and Conflict Management Workplace Mediation Case Summary (undated) (on file with author), based on this Author's interview with one of the mediators involved in that case, this Author would characterize the outcome of one case as "unsuccessful" rather than "resolved."

<sup>34</sup> *See* Ohio Commission on Dispute Resolution and Conflict Management Workplace Mediation Case Summary, *supra* note 33.

<sup>35</sup> In the first group of 15 cases, resolution of at least some issues was obtained in 89% (8 out of 9) of the cases that were actually mediated, although only 60% (9 out of 15) of the cases referred to mediation were actually mediated. In the second group of 27 cases that have been completed (excluding the 2 in process), resolution of at least some issues was obtained in 87% (13 out of 15) of the cases that actually were mediated, although only 56% (15 out of 27) of the cases referred to mediation were actually mediated.

It is more difficult to make qualitative assessments about the similarities between the first group and second group of disputes referred to mediation under the pilot project. After the end of the evaluation period, but while the evaluation was still underway, new survey instruments were drafted for use in a continuing effort to evaluate the pilot project. Those surveys differ from the original surveys in a number of ways, both in the number and type of questions asked and in the fact that they were distributed only to parties whose disputes were actually mediated. In addition, a number of the disputes in the second group of cases were referred to mediation and mediated prior to the development and use of the new surveys. Accordingly, no surveys were collected for most of this group of disputes. This

There are a number of efforts that state agencies might take to reduce the obstacles to the actual mediation of a greater number of disputes. One of those efforts would be to obtain support for the mediation program from both management officials and from employee groups, such as union representatives, if the employees are represented by a union. Only with this "buy in" are both management and nonmanagement employees likely to have the incentive and interest in agreeing to submit their disputes to mediation. If the mediation program does not have the actual or at least the apparent support of high management officials, it is likely that supervisory employees will not be sufficiently committed to the mediation program to agree to submit their own disputes to mediation or to encourage their subordinates to participate in the mediation process. Similarly, if union or other employee representatives are not convinced of the merits of the mediation program, or if those representatives view the existence of the mediation program as a threat to their ability to represent employee interests, they are unlikely to support and encourage employees in their decisions with respect to the mediation of disputes.

Agencies also need to use particular care in the selection of the agency coordinators or other individuals who will serve as conduits for referral of disputes to mediation under the program. It is not only important that those individuals be knowledgeable about and committed to the concept of mediation in general, but that those persons have a commitment to attempting to resolve by mediation the types of disputes likely to arise under the mediation program.<sup>36</sup> For example, if the person who acts as a gatekeeper to the mediation program does not sincerely believe that mediation is a suitable alternative for the resolution of allegations of discrimination, that person is unlikely to encourage employees to consider mediation as a method of dispute

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small sample makes it difficult to draw conclusions about this group of disputes. Of the four party surveys collected, three of those are from disputes that were not resolved through mediation. The party whose dispute was resolved in mediation indicated that she was "[s]omewhat satisfied" with the mediation process overall and "[s]omewhat satisfied" with the resolution of her dispute. Of the three parties whose disputes were not resolved through the mediation process, two indicated that they were "[s]omewhat satisfied" with the mediation process overall, and one indicated that she was "[v]ery unsatisfied" with the mediation process overall.

<sup>36</sup> The importance of the coordinator's understanding and commitment to mediation of employment disputes is supported by an evaluation conducted of a pilot mediation project of the federal Equal Employment Opportunity Commission. See McEWEN, *supra* note 2, at 7 ("It is clear that the level of the EEOC staff's [who offered mediation to the charging parties] knowledge about and enthusiasm for mediation affected the willingness of charging parties to undertake mediation.").

resolution for that type of dispute. Accordingly, it is important that there be an understanding of the nature of disputes that are likely to be referred to mediation under a particular mediation program.

Once a coordinator or coordinators within an agency are identified, it is critical that those persons be allowed to commit a sufficient portion of their time to the mediation program, so that those coordinators can not only administer the program in an effective manner but be able to effectively promote the project. Agencies that are convinced of the utility of mediation as a method for resolving workplace disputes are more likely to provide an employee of the agency sufficient release time from his or her other responsibilities to administer the program, because of the recognition of the savings in terms of cost, time, and lost productivity that is likely to accompany an effective dispute resolution mechanism.

A participating agency's commitment to the mediation program should also be reflected in a willingness to allow a sufficient number of agency employees to act as mediators in a mediation program. While paid mediators might be used in a public sector workplace mediation program, the costs associated with retaining paid private mediators could well be prohibitive, at least with respect to most of the workplace disputes likely to arise under such a program.<sup>37</sup> In addition, an agency that has allowed a number of its employees to participate as mediators in a workplace mediation program is more likely to feel invested in the program and its success, given that it has donated the time of employees to the program. Such an agency may also have a greater incentive to use the program, because it may feel the desire to see a "return" on its investment of personnel. Finally, agency employees who act as mediators for other disputes may become more convinced of the utility of mediation for resolving workplace disputes, and therefore carry their enthusiasm for the process back to their colleagues, who then may be more likely to refer their own disputes to mediation.

Agencies administering a mediation program might take steps in order to reduce the administrative obstacles to the mediation of disputes. Even an employee who is committed to trying to resolve his or her dispute by mediation may become discouraged if there are significant delays in arranging and scheduling the mediation sessions. An employee with a tenuous or uncertain commitment to the process may well seize upon the delay or

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<sup>37</sup> That is not to say that all disputes arising out of a state agency should be mediated with the use of volunteer mediators employed by other state agencies. In some situations, the nature of the dispute, the identity of the parties, the complexity of the case, or other factors, such as whether the parties are represented by counsel, might argue for the use of privately retained and paid mediators.

difficulty as a justification for walking away from his or her agreement to submit a dispute to mediation. Accordingly, the more an agency can do to streamline the referral and mediation process, the more likely it is that the agency will be able to eliminate those administrative obstacles. One source of this administrative difficulty may be understaffing of the mediation program generally. Another problem, perhaps caused by understaffing, may be the decentralization of the administration of a mediation program. For example, under the Commission's Workplace Mediation Pilot Project, the agency coordinators were responsible for referring the dispute to the Commission, which in turn was responsible for obtaining mediators for the dispute. The mediators were then responsible for contacting the parties to schedule the mediation sessions. It may be that more of the party contact and scheduling functions might be handled by either the agency coordinators or the Commission itself.<sup>38</sup> While the pilot project reasonably relies on volunteer mediators from state agencies to conduct the mediation itself, it may not be reasonable to shift too much of the administrative burden to volunteer mediators, who have other job duties that are likely to take precedence over these administrative issues.

### *B. Selection and Training of Mediators*

In selecting and training the mediators who will participate in a mediation program, it is important for a program administrator to keep several factors in mind. Parties participating in the mediation process are likely to form their conclusions about the utility of mediation in general and of the mediation program in particular from their experiences with the mediator or mediators of their dispute, particularly if those parties have not had prior experience with mediation. Their experiences with the mediation of their dispute will likely have a substantial effect on both their willingness to submit future workplace disputes to mediation and their willingness to recommend mediation to others. Accordingly, in a real sense, the mediators chosen to mediate disputes will personify the mediation program, as far as the parties are concerned. This makes it very important that the mediators be provided

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<sup>38</sup> In the pilot mediation program undertaken by the Equal Employment Opportunity Commission in 1993 and 1994, different locations for the project handled the scheduling of mediation sessions in different ways. Some of those locations placed the duty of contacting the parties and scheduling the mediation sessions on the mediator, while other locations assigned this duty to the mediation coordinator. See MCEWEN, *supra* note 2, at 9-16.

training and experience in order to increase the chances that parties will have a positive experience in the mediation process.

Mediators must not only themselves have a clear understanding of the mediation process, but they must be able to communicate that understanding to the parties. Particularly in situations in which other dispute resolution mechanisms have been available to the parties, such as grievance procedures and investigatory processes, parties who do not have a clear understanding of the differences between mediation and those other processes are more likely to be disappointed in the mediation process, because they will not see it as effective in “deciding” their dispute. A number of parties in the Commission’s Workplace Mediation Pilot Project who expressed disappointment with the mediation process seemed to expect the mediators to take a more active role in resolving the dispute and were disappointed when that did not occur. A more complete understanding of the process and what to expect from the mediation process might have better prepared those parties for the mediation process and not raised false hopes about what the process could accomplish.

While initial training of mediators is important so that they will understand the purposes behind and the strategies used in mediating disputes, it is also important that there be continued training of the mediators, through refresher mediation training and through experience mediating actual disputes. The comediator format used in the Commission’s Workplace Mediation Pilot Project is an effective method for allowing “on-the-job training” of mediators; being involved in the actual mediation of a dispute, if it occurs under the guidance of an experienced mediator, is likely to be very helpful for mediators in complementing and completing their mediation training. In addition, the use of the comediator format will allow a greater number of mediators to be involved in each mediated dispute, which will increase the number of mediations for each mediator and will enhance the mediator’s experience.

### *C. Comediator Format*

In addition to the advantages of the comediator format with respect to the mediator training aspects of that format, the comediator format seems to have much to recommend it for its own sake. Although the comediator format may contribute somewhat to the administrative costs and difficulties of a mediation program, in that this format will require a greater number of mediators to be available for the mediation of disputes, this format also allows for more diversity among the mediators chosen for a particular dispute.<sup>39</sup> This may be

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<sup>39</sup> In the evaluation of the EEOC’s Pilot Mediation Program, Professor McEwen noted that the costs of mediation using a comediator format were higher than for a single-

particularly important in cases involving racial or gender issues, in which the comediator format allows for mediators of different races and genders, which could increase the comfort level of the parties involved in a dispute. For example, an African-American employee asserting a claim of racial discrimination against his white supervisor might feel more comfortable with the mediation process if one of the mediators shares his race; the same may be true of the white supervisor accused of racial discrimination. Similar reasons exist for providing a gender balance among the mediators of a dispute involving a claim of sexual harassment, given the gender-charged aspects of most of those disputes. However, disputes in which gender or race are implicated are not the only types of disputes likely to benefit from the greater diversity possible when more than one mediator is involved in a mediation. In a claim between a management or supervisory employee and a bargaining unit employee, the presence of mediators from both sides of the labor-management line might well contribute to a greater sense of fairness on the part of all parties to the dispute.

Another factor that speaks in favor of the comediator format is the sense among mediators involved in disputes mediated with this format that the mediation process was more effective when there was someone else present who could share the mediator duties. Mediation is an intensive and exhausting process, in which the mediator has to be constantly aware of the verbal and nonverbal cues provided by the disputing parties. The presence of more than one person to share these duties is likely, at least for some mediators, to relieve some of the pressure involved in mediating. On the other hand, some mediators, perhaps particularly those with extensive experience with the single-mediator format or those with definite ideas about how a mediation should be conducted, might find the presence of another mediator to be distracting or intrusive. As with other aspects of the mediation process, the comediator format is likely to be most effective if those involved in the mediations are supportive of the format.

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mediator format and indicated that there was no evidence that settlement rates or party satisfaction were enhanced by the comediator format. He did note that "[c]o-mediation may, however, give mediators greater confidence and permits the assignment of mediators with differing kinds of skills and experiences to . . . each mediation." MCEWEN, *supra* note 2, at 71 & n.21.

## WORKPLACE MEDIATION PILOT PROJECT

### V. CONCLUSION

The Workplace Mediation Pilot Project of the Ohio Commission on Dispute Resolution and Conflict Management is still in its early stages, and the evaluation conducted of that program, because of its relatively small scope, is hardly the last word on workplace mediation programs. Many of the issues identified with respect to this evaluation may have been unique to the particular program evaluated or to the fact that the evaluation was conducted during the very early stages of the pilot project. On the other hand, some of the issues and concerns identified here echo those seen in evaluations of other pilot mediation projects, such as the one conducted of the EEOC pilot project. Accordingly, the lessons learned from this evaluation may prove useful to those structuring and implementing mediation programs within the public sector workplace.

## APPENDIX A

*Compilation of Results—Two Agency Coordinator Respondents*

**Commission on Dispute Resolution and Conflict Management  
Workplace Mediation Pilot Project  
Agency Coordinator Survey**

The information sought in this survey is being conducted pursuant to a grant by the Commission on Dispute Resolution and Conflict Management to evaluate its Workplace Mediation Pilot Program. Although the information sought here will be used to evaluate the pilot program, your responses are anonymous and will not be associated in any way with your name. After completion of this survey, please return in the enclosed self-addressed, postage-paid envelope provided with this survey. The completed survey should be returned to L. Camille Hébert, The Ohio State University College of Law, 55 West 12th Avenue, Columbus, Ohio, 43210-1391. The fax number is (614) 292-1383. The telephone number is (614) 292-0190.

1. You are presently acting or have acted in the past as an agency coordinator for the workplace mediation pilot project. Please provide the following information concerning your mediation training and your experience with mediation both prior to and in connection with the pilot project:

- a. Did you participate in the State of Ohio Interagency Shared Neutral Mediation Training conducted by Capital University Law School in January 1997?

  2   Yes             No

If yes, please provide a brief assessment of that training. Please indicate ways, if any, in which the training could be improved.

*The training was intense, effective and thought provoking. The instructors were enthusiastic—the role playing was good—for a change.*

*Excellent—the hands on—mediations derived from actual work experience were very helpful in sharpening skills.*

- b. Have you received any mediation training other than the State of Ohio Interagency Shared Neutral Mediation Training conducted by Capital University Law School in January 1997?

  2   Yes             No

If yes, please describe that other training and when you received that other training.



## WORKPLACE MEDIATION PILOT PROJECT

*Advanced mediation—Ohio Supreme Court—CLE Dispute Resolution design. Capital—1996.*

- c. Have you served as a mediator in any dispute referred to mediation as part of the workplace mediation pilot project?

  2   Yes             No

If yes, in how many disputes referred under the pilot project have you served as mediator?

*One.*

*Two.*

- d. Have you mediated any disputes other than those referred to mediation under the workplace mediation pilot project?

  2   Yes             No

If yes, please indicate approximately how many other disputes you have mediated.

*25–30 over the years.*

*75 approximately.*

Did any of the other disputes that you mediated involve disputes arising in the workplace?

  2   Yes             No

2. Please provide the following information concerning your role as agency coordinator for the workplace mediation pilot project:

- a. Which of the following actions have you taken in your role as agency coordinator to promote or explain the pilot project to interested parties?

  1   Prepared a brochure or other literature about pilot program

  2   Held one or more information sessions to introduce the pilot program

  2   Held one or more follow-up information sessions subsequent to the introduction of the pilot program

  1   Conducted or participated in a mediation training session of agency employees

  2   Conducted or participated in a mediation training session of potential mediators for pilot project

  2   Encouraged agency employees to submit appropriate disputes to mediation

  2   Personally explained mediation process to agency employees

  1   Other (please describe)

*Work with the union and human resources to encourage mediation. Explain mediation to union. Prepare cost/benefit analysis.*

- b. In your role as agency coordinator for the pilot project, were you responsible for any of the following actions?

- 2   Contacting the parties to the dispute to determine whether they were willing to mediate their dispute  
  2   Explaining the mediation process to the parties to the dispute  
  2   Contacting the mediators asked to mediate the dispute  
  2   Contacting the parties to the dispute to schedule the mediation sessions  
  2   Contacting the parties after resolution of the dispute to determine if resolution has been complied with

If you were not responsible for any of these actions, please indicate who, if anyone, was responsible for these actions.

- c. In your opinion, how supportive of the workplace mediation pilot project are the following interested persons in your agency:

Agency management and officials:

- 1   Very supportive  
  1   Somewhat supportive  
\_\_\_\_\_ Not very supportive  
\_\_\_\_\_ Not supportive at all

Agency supervisors:

- \_\_\_\_\_ Very supportive  
  1   Somewhat supportive  
  1   Not very supportive  
\_\_\_\_\_ Not supportive at all

Non-supervisory agency employees:

- \_\_\_\_\_ Very supportive  
  1   Somewhat supportive  
\_\_\_\_\_ Not very supportive  
\_\_\_\_\_ Not supportive at all

Labor organizations and union officials:

- 1   Very supportive  
  1   Somewhat supportive  
\_\_\_\_\_ Not supportive at all

## WORKPLACE MEDIATION PILOT PROJECT

3. Have you as agency coordinator referred any disputes to mediation under the workplace mediation pilot project?

2 Yes      \_\_\_\_\_ No

If yes, how many disputes have you referred to mediation?

*Seven.*

*Nine.*

Of the disputes that you have referred to mediation, how many of those disputes have actually been mediated?

*Six.*

*Four.*

Of the disputes referred to mediation that have actually been mediated, in how many of those disputes was a resolution or agreement reached on some or all of the issues in the dispute?

*Five.*

*Three.*

4. Please provide the following information concerning your experience with the pilot project:

- a. Based on your experience, in what types of disputes are parties most likely to agree to submit their disputes to mediation? (check all that apply)

\_\_\_\_\_ Disagreement over work or job assignment  
1 \_\_\_\_\_ Disagreement concerning disciplinary action  
\_\_\_\_\_ Disagreement over job benefits  
2 \_\_\_\_\_ Personality conflict or disagreement over work styles  
2 \_\_\_\_\_ Claim of racial, sexual, or other type of discrimination  
\_\_\_\_\_ Other (please describe)

- b. Based on your experience, in what types of disputes are parties least likely to agree to submit their disputes to mediation? (check all that apply)

1 \_\_\_\_\_ Disagreement over work or job assignment  
1 \_\_\_\_\_ Disagreement concerning disciplinary action  
1 \_\_\_\_\_ Disagreement over job benefits  
\_\_\_\_\_ Personality conflict or disagreement over work styles  
\_\_\_\_\_ Claim of racial, sexual, or other type of discrimination  
\_\_\_\_\_ Other (please describe)

- c. Based on your experience, which parties are most likely to agree to submit their disputes to mediation? (check all that apply)
- ☐ Agency management or officials
  - ☒ Agency supervisors
  - ☒ Non-supervisory employees
  - ☒ Union members
  - ☐ Other (please describe)
- d. Based on your experience, which parties are least likely to agree to submit their disputes to mediation? (check all that apply)
- ☒ Agency management or officials
  - ☒ Agency supervisors
  - ☐ Non-supervisory employees
  - ☐ Union members
  - ☐ Other (please describe)
- e. Based on your experience, please indicate the reason or reasons why you believe parties are reluctant to or have reservations about submitting disputes to mediation. (check all that apply)
- ☒ Did not have sufficient understanding of mediation process
  - ☒ Did not believe that mediation would work to resolve the dispute
  - ☒ Did not believe that other parties to dispute would agree to mediation
  - ☐ Did not trust in confidentiality of mediation
  - ☐ Believed that he or she would have to give up right to file a grievance or formal complaint to participate in mediation
  - ☒ Other (please describe)

*Distrust of other parties—managers feel being asked to mediate is a slap in the face.*

- f. Based on your experience, please indicate the reason or reasons why you believe that disputes that are referred to mediation are not actually mediated.
- ☒ One or more of the parties to the dispute changed his or her mind after referral of the dispute to mediation.
  - ☐ It was too difficult to find a time to mediate the dispute.
  - ☒ The dispute was resolved prior to the actual mediation of the dispute.
  - ☒ Other (please describe)

*Lipservice only when they agreed to mediate.*

## WORKPLACE MEDIATION PILOT PROJECT

- g. Based on your experience, what are the reason or reasons that disputes that are actually mediated are not resolved in mediation?

*The parties do not get to the root of the problem at the mediation, or they are not honest with each other about issues.*

*One or both of the parties are not sincere in taking part in mediation session, or the problem is so deeply seated that nothing short of separation from employment by one or both parties will solve problem—or problem is really out of reach for parties to resolve—e.g., systemic problem in organization.*

5. Please provide the following information about yourself.

- a. Gender/Sex

  1   Male      1   Female

- b. Racial or ethnic group to which you belong:

       African-American or Black

       Asian

  2   Caucasian

       Hispanic

       Native American

       Other

- c. Age

       Under 21

  1   20 to 40

  1   40 to 60

       Over 60

- d. What is the nature of your job position within your agency?

  2   Supervisor or member of management

       Bargaining unit employee

       Other (please describe)

6. Do you have any suggestions for the improvement of the mediation process as you experienced it under the workplace mediation pilot project?

*Provide more marketing for program. Devise management training.*

*It needs more promoting—across the state—push by Governor.*

7. In your opinion, should the workplace mediation pilot project be extended to allow the participation of other state agencies?

  2   Yes                             No

## APPENDIX B

*Compilation of Results—Fourteen Mediator Respondents***Commission on Dispute Resolution and Conflict Management  
Workplace Mediation Pilot Project  
Mediator Survey**

The information sought in this survey is being conducted pursuant to a grant by the Commission on Dispute Resolution and Conflict Management to evaluate its Workplace Mediation Pilot Program. Although the information sought here will be used to evaluate the pilot program, your responses are anonymous and will not be associated in any way with your name. After completion of this survey, please return in the enclosed self-addressed, postage-paid envelope provided with this survey. The completed survey should be returned to L. Camille Hébert, The Ohio State University College of Law, 55 West 12th Avenue, Columbus, Ohio, 43210-1391. The fax number is (614) 292-1383. The telephone number is (614) 292-0190.

1. You have been trained as a mediator under the workplace mediation pilot project. Please provide the following information concerning your mediation training and your experience with mediation both prior to and in connection with the pilot project:

- a. Did you participate in the State of Ohio Interagency Shared Neutral Mediation Training conducted by Capital University Law School in January 1997?

11 Yes      3 No

If yes, please provide a brief assessment of that training. Please indicate ways, if any, in which that training could be improved.

*Very intense, very realistic—best training I have ever attended.*

*I thought everything was presented in a very understandable format. The role playing sessions were good, and the video showed us what we can expect in the real world.*

*Very good—comprehensive, provocative. The opportunity to role play was critical to a successful experience.*

*Very good.*

*The training I felt was very beneficial in showing ways/different ways of solving a concern or problem.*

*The week-long training was very good. The group work was exceptionally helpful in preparing me for real mediations.*

*The training was very good. Role plays were effective. Instructors were*

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*exceptional. Videos provided accurate examples.*

*Excellent session. As with all such training, more time could be spent role playing.*

*It was great—very participative.*

*Excellent training—superb role-playing—enthusiastic and well-versed instructors.*

- b. Have you received any mediation training other than the State of Ohio Interagency Shared Neutral Mediation Training conducted by Capital University Law School in January 1997?

  7   Yes      7   No

If yes, please describe that other training and when you received that other training.

*OSU College of Law; CMS/CBA 40 hour training; Advanced training through Academy of Family Mediators and other organizations (including Supreme Court of Ohio).*

*Capital University Mediation Training, 1993; CDR Associates, Boulder, Colorado, 1993—40 hours; Various seminars totaling about 100 hours.*

*Various seminars offered through CLE—Ohio Supreme Court, Columbus Bar Association.*

*OSU CLE, Supreme Court Advanced Mediator, various other.*

*Capital Law School, 1996.*

- c. Have you mediated any disputes other than those referred to mediation under the workplace mediation pilot project?

  7   Yes      7   No

If yes, please indicate approximately how many other disputes you have mediated.

*Fifty.*

*Eight.*

*Seven.*

*Seventy-five plus.*

*Twenty-five to thirty over the years.*

*I have four children; I have managed 200 people at one point in my career.*

Did any of the other disputes that you mediated involve disputes arising in the workplace?

  4   Yes      6   No

2. If you have been called to serve as a mediator in a dispute referred to mediation under the workplace mediation pilot project, please provide the following information concerning the dispute referred to mediation:

- a. Nature of the dispute: (check all that apply)

  9   Disagreement over work or job assignment  
  1   Disagreement over disciplinary action  
\_\_\_\_\_ Disagreement over job benefits  
 11  Personality conflict or disagreement over work styles  
  1  Claim of racial, sexual, or other type of discrimination  
\_\_\_\_\_ Other (please describe)

- b. Parties involved in the dispute: (check all that apply)

  8   Direct supervisor and subordinate  
  3   Other supervisor and subordinate  
  7   Co-workers  
  3   Union member  
\_\_\_\_\_ Other (please describe)

- c. Do you believe that any of the parties to the dispute were reluctant to or had reservations about submitting the dispute to mediation?

 12  Yes      \_\_\_\_\_ No

*This answer based on the fact that parties in the two disputes I was assigned to withdrew from mediation prior to any meeting with them.*

If yes, what do you believe was the reason for that party's or parties' reluctance or reservations about submitting the dispute to mediation? (check all that apply)

  9   Did not have sufficient understanding of mediation process  
  4   Did not believe that mediation would work to resolve the dispute  
  3   Did not believe that other parties to dispute would agree to mediation  
  2   Did not trust in confidentiality of mediation  
  1   Believed that he or she would have to give up right to file a grievance or formal complaint to participate in mediation  
  2   Other (please describe)

*Thought the problem had been resolved.  
Obstinate, angry personality.*

- d. In connection with the dispute that you were asked to mediate, were you responsible for any of the following actions? (check all that apply)

  8   Contacting the other mediator involved in the mediation



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- 8   Contacting the parties to the dispute to determine whether they were willing to mediate their dispute
- 9   Contacting the parties to the dispute to schedule the mediation sessions
- 11  Explaining the mediation process to the parties

If you were not responsible for these actions, please indicate who, if anyone, was responsible for these actions.

*Co-mediator was responsible for contacting all parties.*

*Co-mediated with \_\_\_\_\_.*

3. Was the dispute for which you were asked to act as a mediator actually mediated?

  8   Yes        4   No

4. If the dispute for which you were asked to act as a mediator was not actually mediated, please provide the following information:

- a. What do you believe was the reason or reasons for the failure of the dispute to be mediated? (check all that apply)

  2   One of the parties to the dispute changed his or her mind after referral of the dispute to mediation.

  1   It was too difficult to find a time to mediate the dispute.

  1   The dispute was resolved prior to the actual mediation of the dispute.

  1   Other (please describe)

*Parties determined that they really had no issues to resolve.*

- b. If the dispute for which you were asked to act as a mediator was not actually mediated, how long a period of time was there between initial referral of the dispute to mediation and the determination that the dispute would not be mediated?

  1   Less than one week

  1   One week to two weeks

     Two weeks to one month

  2   More than one month

5. If the dispute for which you were asked to act as a mediator was mediated, please provide the following information about that mediation:

- a. How many different sessions were held during the mediation of the dispute?

  8   One session

  1   Two sessions

- \_\_\_\_\_ Three sessions  
\_\_\_\_\_ More than three sessions
- b. Approximately how much time was spent in all of the sessions during the mediation of the dispute?
- \_\_\_\_\_ Less than one hour  
8 Between one and five hours  
1 Between five and ten hours  
\_\_\_\_\_ More than ten hours
- c. Approximately how long a period of time was there between the initial referral of the dispute to mediation and the resolution of the dispute or, if the dispute was not resolved, the end of the mediation process?
- 1 Less than one week  
4 One week to two weeks  
4 Two weeks to one month  
\_\_\_\_\_ More than one month
- d. Did the parties to the dispute fully participate in the mediation process?
- 8 All of the parties fully participated in the mediation process  
1 Some, but less than all, of the parties fully participated in the mediation process  
\_\_\_\_\_ None of the parties fully participated in the mediation process
- e. Did the parties to the dispute appear to feel comfortable with the mediation process, once the mediation was underway?
- 7 Both parties appeared to be comfortable with the mediation process  
2 At least one, but less than all, parties appeared to be comfortable with the mediation process  
\_\_\_\_\_ None of the parties appeared to be comfortable with the mediation process
- f. During the mediation, did you engage in the following actions? (check all that apply)
- \_\_\_\_\_ Evaluated the merits of the dispute  
1 Recommended a particular resolution or settlement of the dispute  
1 Suggested possible options for resolution or settlement of the dispute  
\_\_\_\_\_ Revealed your views about the dispute
- I wasn't there to recommend, suggest, or reveal my views. I was neutral.*
- g. If you mediated with another mediator, did the other mediator engage in the following actions during the mediation? (check all that apply)
- 1 Evaluated the merits of the dispute  
1 Recommended a particular resolution or settlement of the dispute

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  2   Suggested possible options for resolution or settlement of the dispute  
      Revealed his or her views about the dispute

- h. Overall, how satisfied did the parties to the dispute appear to be with the mediation process?

  6   Very satisfied  
  3   Somewhat satisfied  
      Somewhat unsatisfied  
      Very unsatisfied

- i. Was the dispute resolved during the mediation sessions?

  8   Agreement on all issues  
  1   Agreement on some but not all issues  
      No agreement on any issues

6. If a resolution was reached on some or all of the issues in the dispute mediated, please provide the following information about the resolution:

- a. Did the parties appear to be satisfied with the resolution of the dispute?

  8   Both parties appeared to be satisfied  
      Some, but not all, of the parties appeared to be satisfied  
      None of the parties appeared to be satisfied

- b. In your opinion, was the resolution of the dispute agreed upon by the parties fair and equitable to the parties?

  8   The resolution was fair and equitable to both parties  
      The resolution unfairly favored one or more of the parties  
      The resolution did not appear to be fair to any of the parties

- c. Do you think that it is likely that the resolution of the dispute reached by the parties will be complied with by the parties?

  6   Both parties are likely to comply with the resolution of the dispute  
  3   Some, but not all, of the parties are likely to comply with the resolution of the dispute  
      None of the parties are likely to comply with the resolution of the dispute

- d. Have you had any communication with the parties to the dispute after the end of the mediation process?

  3   Yes        5   No

If yes, please describe the nature of the communication and what you learned in that communication about whether the resolution was complied with and the current relationship between the parties.

*I checked to see if the parties needed further mediation. One party said no, that communications between the two had been restored. The other party, who was on the road, did not return my call. Since the initiator seemed satisfied, I did not call anyone further.*

*Called both to follow up on the results.*

*The party indicated everything was going well.*

- e. In your opinion, if no resolution had been reached of at least some of the issues in the dispute, how likely do you think it is that one or more of the parties to the dispute would have filed a formal complaint or grievance concerning the dispute?

  2   Very likely

  5   Somewhat likely

  1   Somewhat unlikely

       Very unlikely

7. If a resolution was **not** reached on any of the issues in the dispute, please explain the reason or reasons why you believe that the issues in the dispute were not resolved.

*The parties did want to participate. However, the overall process went well.*

8. With respect to the dispute for which you were called to act as a mediator, how many mediators were involved?

  1   Only yourself

  8   Yourself and one additional mediator

- a. If more than one mediator was involved in the mediation process, did one mediator act as the "lead" mediator or otherwise take a leading role in the mediation process?

  7   Yes        1   No

- b. If yes, in what role did you act?

  4   I was the "lead" mediator or took a leading role in the mediation process.

  4   Another mediator was the "lead" mediator or took a leading role in the mediation process.

*Co-mediator, but I had more experience so I helped them out.*

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- c. If more than one mediator was involved in the mediation process, what effect do you believe the involvement of more than one mediator had on the resolution of the dispute or the mediation process? (check all that apply)

☐ Made the mediation go more slowly  
☒ 2 Made the mediation go more quickly  
☐ Made the mediation process more difficult  
☒ 8 Made the mediation process go more smoothly  
☒ 6 Helped in bringing the dispute to resolution  
☐ Hindered the resolution of the dispute  
☒ 1 Other (please describe)

*Helped convey neutral image—gender and race.*

Please explain the reasons that you believe the involvement of more than one mediator had an effect on the resolution of the dispute or the mediation process.

*Helped new mediator learn and feel more confident.*

*The process went smoothly due to the different views of the two mediators.*

*The skills of the two mediators seemed to benefit the process.*

*I was of a different race than the two disputants. The co-mediator was of the same race and seemed to assure the parties of the fairness of the process.*

*There was one man and one woman. The man wouldn't acknowledge me, but he would my co-mediator, also a male.*

*The mediation process can get very intense. Two mediators are able to shift the lead responsibilities back and forth between themselves. It gives an opportunity to collect your thoughts, review (mentally) important aspects of the process as it unfolds, etc. Each mediator provides check and balance function for his/her co-mediator.*

*The combined skills of two mediators enhanced the process.*

9. Please provide the following information concerning the parties involved in the dispute that you were asked to mediate:

First party

Second party

Gender/Sex

Gender/Sex:

☒ 6 Male  
☒ 6 Female

☒ 8 Male  
☒ 7 Female

Race/Ethnicity:

Race/Ethnicity:

☒ 6 African-American/Black  
☐ Asian  
☒ 7 Caucasian  
☐ Hispanic

☒ 3 African-American/Black  
☐ Asian  
☒ 7 Caucasian  
☐ Hispanic

_____ Native American	_____ Native American
_____ Other _____	_____ Other _____
Age	Age
_____ Under 21	_____ Under 21
<u>5</u> 20 to 40	<u>5</u> 20 to 40
<u>4</u> 40 to 60	<u>7</u> 40 to 60
_____ Over 60	_____ Over 60
<u>1</u> Unknown	<u>1</u> Unknown

If there were more than two parties involved in the dispute, please provide the above information about the additional parties.

*Mediation one had three female employees, one African-American and two Caucasians age 20-40 and one male Caucasian 40-60.*

10. Please provide the following information about the other mediator, if any, involved in the mediation of the dispute:

- a. Gender/Sex:
  - 7 Male
  - 3 Female
- b. Racial or ethnic group:
  - 4 African-American or Black
  - \_\_\_\_\_ Asian
  - 6 Caucasian
  - \_\_\_\_\_ Hispanic
  - \_\_\_\_\_ Native American
  - \_\_\_\_\_ Other
- c. Age
  - \_\_\_\_\_ Under 21
  - 4 20 to 40
  - 6 40 to 60
  - \_\_\_\_\_ Over 60
  - \_\_\_\_\_ Unknown
- d. What is the nature of the job position within his or her agency of the other mediator involved in the dispute?
  - 8 Supervisor or member of management
  - \_\_\_\_\_ Bargaining unit employee
  - \_\_\_\_\_ Other (please describe)
  - 2 Unknown

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11. Please provide the following information about yourself:

- a. Gender/Sex  
6 Male 6 Female
- b. Racial or ethnic group to which you belong:  
3 African-American or Black  
     Asian  
9 Caucasian  
     Hispanic  
     Native American  
     Other
- c. Age  
     Under 21  
5 20 to 40  
7 40 to 60  
     Over 60
- d. What is the nature of your job position within your agency?  
11 Supervisor or member of management  
1 Bargaining unit employee  
     Other (please describe)

12. Do you have any suggestions for the improvement of the mediation process as you experienced it under the workplace mediation pilot project?

*Training was excellent; implementation of the process was chaotic.*

*I thought it was very good—would suggest additional training for those who haven't mediated in a while.*

*Less responsibility for mediator to arrange mediation scheduling. Probably took half as much time as the mediation. Volunteer mediators probably don't have the free time to spend on clerical, scheduling functions.*

*Help with educating employees and marketing to managers about mediation as a tool for improvement. Have the Governor plug mediation at cabinet meetings.*

*Process needs much more exposure—promotion by Governor's office, etc.*

*Doing role play mediations for other agencies has improved my skills.*

*To be able to use the mediation skills more often would be beneficial.*

13. In your opinion, should the workplace mediation pilot project be extended to allow the participation of other state agencies?

12 Yes 1 No

## APPENDIX C

*Compilation of Results—Thirteen Party Respondents***Commission on Dispute Resolution and Conflict Management  
Workplace Mediation Pilot Project  
Party Survey**

The information sought in this survey is being conducted pursuant to a grant by the Commission on Dispute Resolution and Conflict Management to evaluate its Workplace Mediation Pilot Program. Although the information sought here will be used to evaluate the pilot program, your responses are anonymous and will not be associated in any way with your name. After completion of this survey, please return in the enclosed self-addressed, postage-paid envelope provided with this survey. The completed survey should be returned to L. Camille Hébert, The Ohio State University College of Law, 55 West 12th Avenue, Columbus, Ohio, 43210-1391. The fax number is (614) 292-1383. The telephone number is (614) 292-0190.

1. You have been a party to a dispute referred to mediation under the workplace mediation pilot project. Please answer the following questions about the dispute to which you were a party:

- a. Nature of the dispute: (check all that apply)

  5   Disagreement over work or job assignment  
  3   Disagreement concerning disciplinary action  
      Disagreement over job benefits  
 10  Personality conflict or disagreement over work styles  
  1  Claim of racial, sexual, or other type of discrimination  
  1  Other (please describe)

*Disagreement over conditions of personal worksite.*

- b. Other party or parties involved in dispute: (check all that apply)

  7   Former or present supervisor  
  4   Former or present subordinate  
  3   Co-worker (not a supervisor or subordinate)  
      Other (please describe)

- c. Approximately how long had this dispute been in existence at the time of referral of the dispute to mediation under the workplace mediation pilot program:

      Less than one week  
  2  Between one week and one month



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- 5 More than one month but less than six months  
4 Between six months and one year  
2 More than one year

2. Please provide the following information concerning your experience with the referral of this dispute to mediation under the workplace mediation pilot project:

- a. Did you have any prior experience with mediation prior to the referral of your dispute to mediation?

       Yes      12 No

If yes, what was the nature of your prior experience with mediation:

- b. Did you have any prior experience with or knowledge of the pilot project prior to the referral of your dispute to mediation?

3 Yes      10 No

- c. How did you first learn about the existence of the workplace mediation pilot project?

2 Brochure for workplace mediation pilot project  
1 Training or other session explaining pilot project  
5 Pilot project was explained to me by agency coordinator  
3 Pilot project was explained to me by mediator  
1 Pilot project was explained to me by some other person  
3 Other (please describe)

*Both of our supervisors.  
Th[rough] union steward.  
EAP referred me.*

- d. Which party initially raised this dispute or brought the dispute to the attention of the pilot project?

5 You  
4 The other party or parties to the dispute  
4 Some other person (please describe)

*Friend who thought it would help.  
EEO officer for ODHS.  
EEO officer.*

- e. What person initially raised the possibility that this dispute might be referred to mediation?

2 You  
2 Another party to the dispute

- 4 Pilot coordinator with your agency  
4 Some other person (please describe)

*Supervisor*

*Union representative*

*EEO officer for ODHS*

*EAP Coordinator*

- 1 Do not know

- f. At the time of the referral of your dispute to mediation under the pilot project, did you feel that you had an understanding of the process of mediation and what was going to occur in the mediation of your dispute?  
7 Yes 6 No
- g. What additional information, if any, would you have liked to have had about mediation at the time of referral of your dispute to mediation under the pilot project?

*What to expect, the process.*

*A specific date and time.*

*None. Things were clearly explained.*

*The mediation program should have been explained better. I didn't know I was being used as guinea pig just to gather data.*

*Better explanation of it.*

- h. At the time of referral of your dispute to mediation, did you have any reservations or reluctance to submit your dispute to mediation?  
7 Yes 5 No

If yes, what was the reason or reasons for your reservations or reluctance to submit the dispute to mediation? (check all that apply)

- 2 Did not have sufficient understanding of mediation process  
5 Did not believe that mediation would work to resolve your dispute  
6 Did not believe that other party or parties to the dispute would agree to mediation  
1 Did not trust in confidentiality of mediation  
2 Believed that I would have to give up my right to file a grievance or a formal complaint to participate in mediation  
3 Other (please describe)

*Worried about possible retaliation by my supervisor.*

*Because of the attitude of the other party, there is no way she can ever see the "big picture." She's one who feels she is never wrong.*

*Did not believe the other party would live up to the findings of the mediator.*

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- i. At the time of the referral of your dispute to mediation, did you believe that the mediation process was voluntary?

11 Yes 2 No

If no, why did you believe that the mediation process was not voluntary?

*I do not recall it ever being explained as a voluntary process.*

3. After referral of your dispute to the pilot project, was your dispute actually mediated?

9 Yes 4 No

4. If your dispute was not mediated, please provide the following information about the failure of your dispute to be mediated.

- a. What was the reason or reasons for the failure of your dispute to be mediated? (check all that apply)

       You changed your mind about mediation after referral of the dispute to mediation.

1 Another party to the dispute changed his or her mind about mediation after referral of the dispute to mediation.

       It was too difficult to find a time to mediate the dispute.

       The dispute was resolved prior to the actual mediation of the dispute.

3 Other (please describe)

*Other person left employment.*

*Supervisor left for temporary assignment for one year and later resigned.*

*Supervisor left work, was able to work with her gone.*

- b. If your dispute was not mediated, how long a period of time was there between the initial referral of the dispute to mediation and the decision not to mediate the dispute?

       Less than one week

       One week to two weeks

1 Two weeks to one month

2 More than one month

5. If your dispute was mediated, please provide the following information about the mediation of your dispute.

- a. How many different sessions were held during the mediation of your dispute?

9 One session

- \_\_\_\_\_ Two sessions  
 \_\_\_\_\_ Three sessions  
 \_\_\_\_\_ More than three sessions

- b. Approximately how much time was spent in all of the sessions during the mediation of your dispute?

- \_\_\_\_\_ Less than one hour  
  9   Between one and five hours  
 \_\_\_\_\_ Between five and ten hours  
 \_\_\_\_\_ More than ten hours

- c. Approximately how long a period of time was there between the initial referral of the dispute to mediation and the resolution of the dispute or, if the dispute was not resolved, the end of the mediation process?

- 2   Less than one week  
  2   One week to two weeks  
  5   Two weeks to one month  
 \_\_\_\_\_ More than one month

- d. Did you feel that you had enough opportunity to tell your views about the dispute during the mediation?

- 7   Yes      2   No

If you feel that you did not have enough opportunity to tell your views about the dispute, how could the mediation have been improved to provide you more opportunity to tell your views about the dispute?

*I felt that the mediators didn't get the complete story. They received bits and pieces of story.*

*My mediators were willing to take as much time as possible to resolve my conflict.*

*I believe the mediator was not interested in the issues that both parties needed to talk about.*

- e. How well do you feel that the mediator or mediators involved in the mediation of your dispute understood your view of the dispute?

- 4   Very well  
  4   Somewhat  
  1   Not at all  
  1   Do not know

If you feel that the mediator or mediators did not understand your view of the dispute at all or only somewhat, what leads you to believe that?

*Because the whole story wasn't told from beginning to end.*

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*Both mediators addressed methods of handling conflicts when they ar[ose].  
[But] they did not address the underl[y]ing distrust and dislike the two parties  
felt.*

- f. Do you believe that the mediator or mediators were fair and impartial?

9 Yes             No

If no, who do you believe that the mediator or mediators favored?

       You

       Another party to the dispute

If you do not believe that the mediator or mediators were fair or impartial,  
what leads you to that belief?

- g. During the mediation of your dispute, did the mediator or mediators engage  
in the following actions? (check all that apply)

4 Evaluated the merits of the dispute

5 Recommended a particular resolution or settlement of the dispute

7 Suggested possible options for resolution or settlement of the dispute

4 Revealed his or her views about the dispute

- h. Overall, do you believe that the mediation process was fair?

4 Very fair

2 Somewhat fair

       Somewhat unfair

       Very unfair

*Yes—None of these apply to the way I feel.*

If you believe that the mediation process was somewhat or very unfair, what  
leads you to that belief?

*I (personally) was under the misconception that mediation was to get a  
situation resolved and was told that administration was to see that all parties  
involved would attend the hearings and get problem resolved. Fell thr[ough]  
the cracks.*

- i. Did the mediation process help you better understand the views of the other  
party or parties to the dispute?

2 Yes      4 Somewhat      3 No

*No—only because my situation was too difficult to understand.*

- j. How has your relationship with the other party or parties to your dispute been affected by your participation in the mediation process?
- 4   The relationship was improved after participation in mediation.  
  1   The relationship was worse after participation in mediation.  
  5   There was no change in the relationship after participation in mediation.
- k. Overall, how satisfied were you with the mediation process?
- 1   Very satisfied  
  6   Somewhat satisfied  
  1   Somewhat unsatisfied  
  2   Very unsatisfied

If you were somewhat unsatisfied or very unsatisfied with the mediation process, please explain the reasons for your dissatisfaction.

*Slow in getting back to us; felt supervisor needed discipline; not the choice to mediate. We were all wronged by her and something stronger needed to be done.*

*Because it never was confidential who the mediator was and once \_\_\_\_\_ found out who he was, she would never return his phone call.*

*The mediators needed to do less interjecting of their feelings, and allow the two parties to express, good or bad, their feelings.*

- l. Was your dispute resolved during the mediation sessions?
- 2   Agreement on all issues  
  6   Agreement on some but not all issues  
\_\_\_\_\_ No agreement on any issues
6. If a resolution was reached on some or all issues in your dispute, please provide the following information about the resolution of your dispute.
- a. How satisfied were you with the resolution of your dispute immediately after the mediation of your dispute?
- 1   Very satisfied  
  7   Somewhat satisfied  
\_\_\_\_\_ Somewhat unsatisfied  
\_\_\_\_\_ Very unsatisfied
- b. How satisfied are you today with the resolution of your dispute reached during the mediation process?
- 1   Very satisfied  
  7   Somewhat satisfied

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1 Somewhat unsatisfied  
       Very unsatisfied

If you were or are now somewhat unsatisfied or very unsatisfied with the resolution of your dispute, please explain the reason for your dissatisfaction.

- c. Since the resolution of your dispute was reached during the mediation process, have you and the other parties to the disputes complied with the terms of the resolution?

8 You have complied with the resolution  
       You have not complied with the resolution  
5 The other parties to the dispute have complied with the resolution  
1 The other parties to the dispute have not complied with the resolution

- d. If a resolution had not been reached of at least some of the issues in your dispute, please indicate how likely it is that you would have filed a formal complaint or grievance concerning the dispute.

3 Very likely  
1 Somewhat likely  
1 Somewhat unlikely  
1 Very unlikely

7. If resolution was not reached on any of the issues in your dispute, please explain the reasons why you believe that issues in the dispute were not resolved.

*Because another party was not at the mediation that should have been.  
The resolutions would have come to the surface if again the underl[y]ing issues of dislike and distrust could have been addressed.*

Have you filed a formal complaint of grievance of any kind concerning the issues on which a resolution was not reached in the mediation of your dispute?

2 Yes 9 No

8. How many mediators were involved in the mediation of your dispute?

       One  
8 Two  
1 More than two

- a. If more than one mediator was involved in the mediation of your dispute, what effect do you believe the involvement of more than one mediator had on the resolution of the dispute or the mediation process? (check all that apply)

1 Made the mediation go more slowly

- 1     Made the mediation go more quickly  
          Made the mediation process more difficult  
3     Made the mediation process go more smoothly  
1     Helped in bringing the dispute to resolution  
          Hindered the resolution of the dispute  
3     Other (please describe)

*Had very little effect either way.*

*No difference.*

*It allowed for more than one opinion to arise which helped me understand and look at any resolutions that would come out of the dispute.*

Please explain the reasons that you believe the involvement of more than one mediator had an effect on the resolution of the dispute or the mediation process.

*I believe that at least two mediators are a must in order to be objective as possible. One may bring up other viewpoints that the other does not. You need more than one for a more positive and thorough mediation.*

*Two opinions versus one opinion.*

*Provide two different opinions.*

*Different points of view and options with opinions.*

- b. Please provide the following information concerning the mediator or mediators involved in the mediation of your dispute:

Lead or first mediator:

Second mediator:

Gender/Sex:

Gender/Sex:

- 5     Male  
4     Female

- 3     Male  
6     Female

Race/Ethnicity:

Race/Ethnicity:

- African-American/Black  
          Asian  
9     Caucasian  
          Hispanic  
          Native American  
          Other

- 8     African-American/Black  
          Asian  
1     Caucasian  
          Hispanic  
          Native American  
          Other

Age

Age

- Under 21  
4     20 to 40  
5     40 to 60

- Under 21  
7     20 to 40  
2     40 to 60



## WORKPLACE MEDIATION PILOT PROJECT

\_\_\_\_ Over 60  
\_\_\_\_ Unknown

\_\_\_\_ Over 60  
\_\_\_\_ Unknown

9. Please provide the following information concerning yourself:

a. Gender/Sex

4 Male 8 Female

b. Racial or ethnic group to which you belong:

6 African-American or Black

\_\_\_\_ Asian

5 Caucasian

\_\_\_\_ Hispanic

1 Native American

\_\_\_\_ Other

c. Age

\_\_\_\_ Under 21

7 20 to 40

5 40 to 60

\_\_\_\_ Over 60

d. What is the nature of your job position within your agency?

5 Supervisor or member of management

7 Bargaining unit employee

\_\_\_\_ Other (please describe)

10. Do you have any suggestions for the improvement of mediation as you experienced it under the workplace mediation pilot project?

*I think the mediation program needs improvement. I think the mediator needs to get to the root of the problem. This means putting everything on the table for discussion and continue to monitor the situation after departure.*

*A follow-up discussion in approximately six months may help to bring closure to the entire process. I never truly felt that the process brought closure.*

*Provide more detail regarding what one can expect and how solutions are usually reached. Describe what type of solutions can be expected.*

*Resolution teams must be already present "before" issues reach the boiling point. I think it's a little late to ask about a problem that was to have been mediated over six months ago, when mediation didn't work then, and the \_\_\_\_\_ is no longer with the division. Plus, I have not heard of anyone in the division attempting to use mediation.*

*I think the mediators needed to do more homework to find out the background of the parties that are having the dispute and conflicts.*

11. Based on your experience with the pilot project, would you recommend mediation to a friend or colleague with a workplace dispute?

8 Yes 3 No

*Depends on the situation.*

12. Based on your experience with the pilot project, would you choose mediation again if you were involved in another workplace dispute?

8 Yes 4 No

*This survey came so long after the incident that I had to really think about—so I believe the answers are accurate.*

*I believe mediation is not for everyone. I think if the situation is light and delicate, mediation might work. But for a more serious situation, mediation doesn't work.*